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No. 90-1038

In The
Supreme Court of the United States

October Term, 1990

THOMAS CIPOLLONE, individually and as
Executor of the Estate of Rose D. Cipollone,
Petitioner,
vs.

LIGGETT GROUP, INC., a Delaware Corporation;
PHILIP MORRIS INCORPORATED, a Virginia
Corporation; and LOEW'S THEATRES, INC.,
a New York Corporation,

Respondents.

On Writ Of Certiorari To The United States
Court Of Appeals For The Third Circuit

JOINT APPENDIX

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Petition For Certiorari Filed December 28, 1990
Certiorari Granted March 25, 1991

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The Opinion of the United States Court of Appeals for the Third Circuit dated January 5, 1990 (Reproduced at pp. 1a - 93a of the Appendix to the Petition for a Writ of Certiorari)
The Opinion of the United States Court of Appeals for the Third Circuit dated April 7, 1986 (reproduced at pp. 95a-108a of the Appendix to the Petition for a Writ of Certiorari)
The Opinion of the United States District Court, District of New Jersey dated September 20, 1984 (Reproduced at pp. 109a - 162a of the Appendix to the Petition for a Writ of Certiorari)
Related Case in Conflict with <i>Cipollone</i> : <i>Forster, et al. v. R.J. Reynolds Tobacco Co., et al.</i> , (Reproduced at pp. 164a - 180a of the Appendix to the Petition for a Writ of Certiorari)
Related Case in Conflict with <i>Cipollone</i> : <i>Dewey, et al. v. R.J. Reynolds Tobacco Co., et al.</i> , (Reproduced at pp. 181a - 226a of the Appendix to the Petition for a Writ of Certiorari)
Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331-1340 (Reproduced at pp. 1a - 5a of the Appendix to Respondents Brief on Petition for a Writ of Certiorari)
Related Case in conflict with <i>Cipollone</i> : <i>Carlisle v. Philip Morris, Inc., et al.</i> (Reproduced at pp. 6a - 49a of the Appendix to Respondents Brief on Petition for a Writ of Certiorari)

Appendix A

CHRONOLOGICAL LIST OF RELEVANT
DOCKET ENTRIES

Thomas Cipollone, individually and as Executor of the
Estate of Rose D. Cipollone,

Plaintiff/Appellant,

v.

Liggett Group, Inc., a Delaware Corporation, Phillip
Morris, Incorporated, a Virginia Corporation; and Loew's
Theatres, Inc., a New York Corporation,

Defendant/Respondent.

SUPREME COURT OF THE UNITED STATES

10/6/86 Plaintiff's petition for Writ of Certiorari, filed
12/07/86 Defendant/Respondents' Reply, filed
01/12/87 Order denying petition for Writ of Certiorari
12/28/90 Plaintiff's petition for Writ of Certiorari, filed
03/01/91 Defendant/Respondents' Reply, filed
03/25/91 Petition for Writ of Certiorari Granted

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

12/17/84 Defendant Loew's Theatres, Inc.'s & Liggett
Group, Inc.'s notices of permission to appeal
federal preemption ruling and seeking stay of
all District Court proceedings.
01/04/85 Order granting permission to appeal federal
preemption ruling, denying application for
stay.
05/21/85 Defendant/Appellants' brief filed.
07/12/85 Plaintiff/Appellee's brief filed.

04/07/86 Opinion of Third Circuit regarding preemption.

04/21/86 Plaintiff/Appellee's petition for rehearing.

05/09/86 Order denying petition for rehearing.

05/19/86 Amended judgment of Third Circuit Court of Appeals reversing preemption portion of USDC opinion of September 24, 1984, remanding for further proceedings consistent with opinion and taxing costs against appellee.

08/26/86 Plaintiff/Appellee's motion to vacate Third Circuit Opinion, filed.

09/05/86 Order denying Appellee's motion to vacate.

09/21/88 Notice of appeal by defendant, Liggett Group, Inc., regarding trial, filed.

10/03/88 Notice of appeal by plaintiff, filed.

10/05/88 Notice of cross appeal by defendants, Lorillard, Inc. and Phillip Morris, Inc., filed.

11/29/88 Plaintiff's brief, filed.

12/29/88 Defendants' briefs, filed.

01/05/90 Opinion of U.S. Court of Appeals for the Third Circuit.

01/19/90 Plaintiff's petition for rehearing and petition for rehearing *en banc*.

01/19/90 Motion by all defendants for rehearing before the panel and motion to stay the mandate.

01/31/90 Order denying all defendants' petitions for rehearing and requiring plaintiff to answer allegations of Point V.

01/31/90 Order denying plaintiff's motion for rehearing.

03/02/90 Order denying plaintiff's petition for clarification of opinion filed 1/5/90.

03/02/90 Order granting defendants motion for stay of mandate pending decision of N.J. Supreme Court in *Dewey v. R.J. Reynolds*

08/08/90 Defendants supplemental petition for rehearing before panel.

08/15/90 Plaintiff's reply to defendants petition for panel rehearing.

08/30/90 Judgment and opinion denying defendants petition for rehearing.

09/10/90 Certified copy of order of USCA Denying petitions of Philip Morris, Lorillard & Liggett for rehearing etc. & Mandate previously stayed, shall be issued forthwith filed 9/7/90.

09/10/90 Copy of Opinion of USCA filed 9/7/90. (GIBBONS, BECKER & NYGAARD)

09/10/90 Certified Copy of Judgment in lieu of mandate in Appeals 88-5732; 88-5770; 88-5771 & 88-5784 AFFIRMING in part as to order dismissing plaintiff's post-1965 failure to warn claims & intentional tort claims against Liggett, Lorillard and Philip Morris; AND DENYING remaining appeals and REMANDING to district court for NEW TRIAL filed 9/7/90.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

08/02/83 Complaint and Jury Demand filed, 8/1/83.

08/10/83 Amended Complaint and Jury Demand, filed 8/5/83.

10/03/83 Notice of motion of defendant, Loew's Corp. for dismissal of amended complaint.

10/27/83 Second Amended Complaint and Jury Demand, filed 10/26/83.

- 11/04/83 Order denying motion of defendant, Loews Corp. for dismissal of the First Amended Complaint; granting plaintiff's leave to file the Second Amended Complaint; staying discovery as to the merits of the Second Amended Complaint as to all parties.
- 02/28/84 Motion by plaintiffs to strike the Seventh Affirmative Defense of defendant, Liggett Group, Inc., paragraph five of "Additional Defenses" of defendant, Philip Morris, Inc. and the Fifth Separate Defense of Loew's Theatres, Inc. returnable 2/26/84.
- 04/16/84 Motion by defendant, Loew's Theatres, Inc. for judgment on the pleadings, filed.
- 09/24/84 Opinion, filed 9/20/84. (Sarokin) Denying defendants' motion for judgment on pleadings & granting plaintiff's motion to strike defendants' preemption defenses.
- 09/24/84 Order granting plaintiff's motion to strike seventh affirmative defense of defendant, Liggett Group Inc.; paragraph five of additional defenses of defendant Philip Morris Inc. & fifth separate defense of defendant Loew's Theatre Inc.; & denying motion of defendant's for judgment on the pleadings filed 9/20/84. (Sarokin)
- 10/19/84 Motion by defendant, Loew's Theatres, Inc. for certification for interlocutory appeal on question of federal preemption and staying all pretrial proceedings.
- 12/07/84 Opinion granting motion to certify federal preemption issue and denying motion to stay proceedings pending appeal.
- 12/11/84 Order amending Court Order of 9/20/84; granting plaintiff's motion to strike seventh affirmative defense of defendant, Liggett Group, Inc.; denying defendants' motion for

- judgment on the pleadings; denying defendant, Loew's Theatres, Inc., motion for stay of all pretrial proceedings, etc. filed. 12/7/84 (Sarokin).
- 01/28/85 Certified copy of order from U.S.C.A. granting Loew's Theatres, Inc. permission to appeal; denying motion for a stay of proceedings in the U.S.D.C. pending disposition of appeal, filed. 1/23/85 (USCA #85-5074).
- 04/16/85 Motion by plaintiff to file Third Amended Complaint, filed.
- 06/04/85 Third Amended Complaint & Jury Demand, filed. 5/31/85.
- 08/07/85 Notice of appeal on behalf of defendants, Liggett Group, Inc., Philip Morris, Inc., and Loew's Theatres, Inc., filed 8/6/85.
- 08/19/85 Certified copy of order of USCA granting motion staying USDC order of 7/17/85, etc., filed. 8/16/85.
- 03/17/86 Copy of opinion of USCA, filed. 3/14/86.
- 03/17/86 Writ of Mandamus, directing J. Sarokin to vacate orders of 7/17/85 regarding protective order, filed. 3/14/86.
- 4/23/86 Copy of order from USCA granting the petition for a writ of mandamus & dismissing the appeals in USCA's 85-5529 & 85-5530 for lack of appellate jurisdiction with notation of appellate costs thereon, filed. 4/10/86.
- 05/20/86 Order regarding issuance of Writ of Mandamus in accordance with the U.S.C.A.'s Opinion & Order of 3/12/86, with costs in favor of defendant/petitioner Liggett Group, Inc., and against plaintiff/respondent Antonio Cipollone, individually and as Executor of the Estate of Rose D. Cipollone, filed. 5/15/86 (Sarokin).

- 05/27/86 Certified Copy of Amended Judgment in lieu of formal mandate reversing plaintiff's motion to the extent that it granted plaintiff's motion to strike defendants' Liggett Group & Loews Theatres preemption defenses; remanding for further proceedings with notation of appellate costs thereon, filed.
- 07/10/86 Motion by plaintiff, for clarification on the effect of preemption opinion by the Third Circuit on plaintiff's causes of action.
- 07/17/86 Defendants cross-motion for partial judgment on the pleadings and response to plaintiff's motion for clarification of preemption opinion.
- 09/25/86 Order striking evidence relating to collateral economic benefits allegedly generated by the tobacco industry as irrelevant and immaterial to the question of the risk vs. utility of cigarettes, pretrial discovery limited to preclude investigation into the areas, filed. (Sarokin)
- 10/06/86 Certified copy of order of USCA denying appellee's motion to vacate USCA's opinion of 4/7/86, filed. 10/2/86 (85-5073/50-4).
- 12/09/86 Order clarifying preemption opinion of Third Circuit; denying plaintiff's motion to strike defendants' preemption defense as to Counts 2, 6, 7, 8 & 9; denying defendants' motion to dismiss Count 2; granting defendants' motion to dismiss Counts 6, 7 & 8; granting plaintiff's motion to strike defendants' preemption defense the portion of Count 4 which alleges negligent research & testing; denying defendants' motion to dismiss portions of Count 4 which alleges negligent research & testing; granting defendants' motion to dismiss the portion of Count 9 which alleges the ineffectiveness of defendants' warnings, etc., filed (Sarokin).

- 02/17/87 Certified copy of order of USCA denying motion for a stay pending disposition of a Petition for Mandamus, filed. 2/13/87.
- 06/30/87 Certified copy of order of USCA denying petition for a Writ of Mandamus and reassignment, filed. 6/26/87.
- 07/24/87 Order on mandate from USCA, taxing costs in favor of plaintiffs, Cipollone, et al and Haines, et al and against defendants, Liggett Group, Inc., Philip Morris Incorporated, Loews Corporation and Loews Theatres, Inc., and defendants on Civ. 84-678 - Liggett Group, Inc. Loews Theatres Inc., R.J. Reynolds Tobacco Co., Philip Morris, Inc., and the Tobacco Institute, filed. 7/21/87 (Sarokin).
- 09/08/87 Motion by all defendants for partial summary judgment on the pleadings, filed 9/4/87.
- 10/28/87 Order granting defendants' motion for partial summary judgment on the pleadings.
- 11/23/87 Motion by plaintiff for summary judgment, filed 11/20/87 (brief).
- 01/20/88 Motion by defendant Liggett Group Inc. for summary judgment, filed.
- 01/27/88 TRIAL WITH JURY MOVED BEFORE HON. H. LEE SAROKIN
- 06/17/88 Judgment in the sum of \$400,000.00 in favor of plaintiff, Antonio Cipollone and against defendant Liggett Group, Inc. and Judgment of No Cause for Action for defendants Philip Morris and Lorillard Inc., (formerly Loews Theatres, Inc.) and all against plaintiff Antonio Cipollone, filed. 6/15/88. (Sarokin)
- 06/30/88 Motion by plaintiff for partial new trial on the issue of quantum of compensatory damages sustained by Rose Cipollone during her lifetime, filed.

- 07/05/88 Motion by defendant Liggett Group, Inc., for entry of judgment notwithstanding the verdict, or in the alternative for the entry of an order for a new trial on the grounds that the finding of liability on plaintiff's express warranty claim is against the weight of the evidence, filed. 7/1/88
- 08/24/88 Order denying defendant Liggett Group's motion for judgment notwithstanding the verdict, for a new trial, and denying plaintiff motion for a partial new trial on the issue of the quantum of compensatory damages, to correct the judgment to add interest and damages, filed. (Sarokin)
- 05/11/90 Order substituting Thomas Cipollone as plaintiff, filed 5/10/90. (Hedges)
- 12/13/90 Case management order in Civ 84-678 (HLS) which makes reference to *Cipollone* Civ. 83-2864 counsel for plaintiff's therein intent to petition for writ of certiorari to U.S. Supreme Court on or before 12/28/90; in which case all proceedings in Cipollone will be stayed etc. (HEDGES).
-

PLAY SAFE

SMOKE CHESTERFIELD

THEY'RE *MUCH Milder* WITH
• NO UNPLEASANT AFTER-TASTE

because— A. CHESTERFIELD
uses the world's best, mild, ripe
tobaccos, pre-tested for the most
desirable smoking qualities

B. CHESTERFIELD keeps these
tobaccos tasty and fresh with tried
and tested moistening agents—pure
natural sugars, costly glycerol—
nothing else.

C. CHESTERFIELDS
are wrapped in cigarette paper of
the highest purity.

BEHOLD THE MARK OF A WELL-KNOWN RESEARCH ORGANIZATION

CHESTERFIELD

CONTAINS ONLY INGREDIENTS THAT GIVE YOU
the Best Possible Smoke—
AS TESTED AND APPROVED BY SCIENTISTS
FROM LEADING UNIVERSITIES



This advertisement appears in
Collier's.....Aug. 2, 1932
Life.....Aug. 14, 1932
Nat. Rev. Pub.....Aug. 25, 1932

NOSE, THROAT,

and Accessory Organs not Adversely
Affected by Smoking Chesterfields

**FIRST SUCH REPORT EVER PUBLISHED
ABOUT ANY CIGARETTE**

Appendix C

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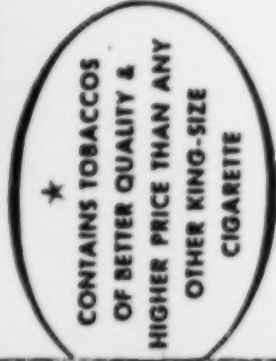
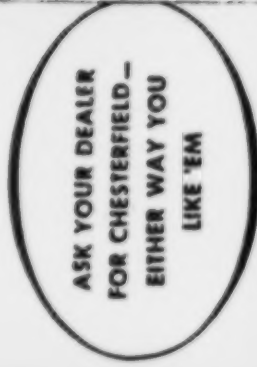
A responsible consulting organization has reported the results of a continuing study by a competent medical specialist and his staff on the effects of smoking Chesterfield cigarettes.

A group of people from various walks of life was organized to smoke only Chesterfields. For six months this group of men and women smoked their normal amount of Chesterfields - 10 to 40 a day. 45% of the group have smoked Chesterfields continually from one to thirty years for an average of 10 years each.

At the beginning and at the end of the six-months

period each smoker was given a thorough examination, including X-ray pictures, by the medical specialist and his assistants. The examination covered the sinuses as well as the nose, ears and throat.

The medical specialist, after a thorough examination of every member of the group, stated: "It is my opinion that the ears, nose, throat and accessory organs of all participating subjects examined by me were not adversely affected in the six-months period by smoking the cigarettes provided."



Buy CHESTERFIELD - Much Milder

Copyright 1952 Lorain & Sons, Inc. - C

Appendix D

PLAINTIFF'S EXHIBIT 2700

December 24, 1953

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PRELIMINARY RECOMMENDATIONS FOR
CIGARETTE MANUFACTURERS

Because of the grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking, widespread public interest has developed, causing great concern within and without the industry.

These developments have confronted the industry with a serious problem of public relations. Obviously, that problem would be quickly solved if the adverse publicity would cease and people would stop talking about the whole matter.

But there is no evidence that the publicity has abated, or is about to abate, or that the research workers who are critical of cigarettes are going to cease these criticisms. A check among national magazines indicates that other periodicals are considering articles on the subject. Among them are Woman's Home Companion, Look and Cosmopolitan. The February issue of Pageant has an article publicizing the Wynder researches.

There is nothing the manufacturers can say or refrain from saying that can stop people from being interested in their health, nor allay their fear of cancer. So long as the causes and cure of this dread disease remain unknown people will be subject to waves of fear regarding it.

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It is important that the industry do nothing to appear in the light of being callous to considerations of health or of belittling medical research which goes against cigarettes.

The industry should lose no time in making it completely clear to the American people that it is not unmindful of the public health.

There is an evident urgency about the matter which makes it advisable to suggest certain immediate steps. A fully rounded-out program will be developed when there has been enough time to make a more comprehensive study of additional aspects of the problem and to think through various courses of action and projects.

The situation is one of extreme delicacy. There is much at stake and the industry group, in moving into the field of public relations, needs to exercise great care not to add fuel to the flames.

The recommended approach is conservative and long-range. We do not believe the industry should indulge in any flashy or spectacular ballyhoo. There is no public relations nostrum, known to us at least, which will cure the ills of the industry with one swallow. The need is for a soundly conceived and effectively executed program based upon continuing research and factual information.

It would be a mistake for the industry group to inaugurate the contemplated program unless it is prepared to maintain it for a minimum of three years. The results of some of the medical research suggested could hardly be in hand short of that period of time.

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The underlying purpose of any activity at this stage should be reassurance of the public through wider communication of facts to the public. It is important that the public recognize the existence of weighty scientific views which hold there is no proof that cigarette smoking is a cause of lung cancer.

In connection with the proposed activity, it is impossible to overlook the fact that some of the industry's advertising has come in for serious public criticism because of emphasis on health aspects of smoking.

This, of course, is a problem for the individual companies and will not be included in this program. But it must be recognized that some of the advertising may have created a degree of skepticism in the public mind which at the start at least could affect the believability of any public relations effort.

The decision of a group of companies in the industry to take joint action needs to be implemented by the selection of a Chairman and Treasurer and the adoption of procedures for the collection and disbursement of funds. In addition, it is important that the group establish procedures for expeditious clearance of any policy statements it may decide to issue.

The following recommendations are submitted for consideration by the manufacturers:

1. Headquarters of the Committee. Headquarters should be established in New York City.
2. Name of Committee. The following name is submitted: Tobacco Research Committee.

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3. Set-up and function of Committee. The word "research" should be included in the name of the Committee to establish the fact that the group will carry on or sponsor fundamental scientific research and will not be solely an information agency. The Committee's research should be of two kinds:

- (a) scientific, medical research
- (b) editorial and statistical research into pertinent phases of the current controversy.

The Committee should be prepared on competent scientific advice from outside the industry to give substantial support to objective non-duplicating medical research that is most likely to be productive promptly of convincing results.

The Committee should have a Director of Research, a medical research authority of unquestioned national repute. The Director would have such research assistants as may be required. The Research Director would serve as spokesman for the Committee on medical and scientific matters.

The Committee should also form an Advisory Board composed of a group of distinguished men from the fields of medicine, research and education. These should be men whose integrity is beyond question.

The Director of Research and the Advisory Board should be consulted by the Committee on these points:

- a. What areas of objective medical research should be undertaken? Should it be confined to the problem of lung cancer or extend to other aspects of cigarette smoking and health?

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- b. How and where and under what auspices should the industry carry out its joint research effort? Should a Research Foundation be established which would finance research projects by existing laboratories and institutions, and if so, which ones? Or should the industry establish a new jointly financed research laboratory to carry on the work?
- c. How much money, in the opinion of the Committee's Director of Research and its Advisory Board, should the member companies appropriate for medical research undertaking?

4. Public Statement by cigarette makers. The first public statement of the Committee should be designed to clarify the problem and to reassure the public that: (a) the industry's first and foremost interest is the public health; (b) there is no proof of the claims which link smoking and lung cancer; and (c) the industry is inaugurating a joint plan to deal with the situation.

This statement should be:

- (a) distributed widely as news, and to employees, stockholders, distributors, tobacco growers, dealers, suppliers, public officials, national and community leaders and other groups;
- (b) placed as an advertisement in leading newspapers and in leading news magazines.

(Draft of suggested copy of statement is attached.)

5. Research Sub-committee. A scientific research sub-committee should be set up by the top committee to

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be composed of Research Directors of member companies for the purpose of:

- a. working with the Committee's Director of Research;
- b. reviewing scientific materials assembled for public information;
- c. initiating scientific material for educational use by the Committee.

6. Continuing Public Relations Research. There should be set up at the headquarters of the Committee, under the direction of the Research Director, a continuing research project to collect, coordinate and disseminate (where practical) available information on various medical research activities bearing on pertinent phases of cigarettes and health. As time permits, this project would explore such questions as:

- a. Why do mice show no tendency to develop lung cancer in experiments where they live half their lives in smoke-filled chambers?
- b. Why, in some experiments, do mice show a tendency to develop skin cancer, when painted over a period with tobacco tars - whereas efforts to produce lung cancer in mice, by keeping them immersed in tobacco smoke, have failed?
- c. Why has the rise in lung cancer been most marked among men, although the greatest rise in the use of cigarettes in the last 25 years seems to have been among women?
- d. Why does the rate of lung cancer vary so greatly between certain cities, although the per capita rate of cigarette consumption in these cities seems approximately the same?

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- e. What is the correlation, if any, between lung cancer and certain changes in American life - such as steadily increased industrialization, increased urbanization, and the rising problem of atmospheric pollution in many of our urban centers?
- f. Why is cancer of the lung on the increase, whereas no such rise appears in similar illness of the tongue, lip or throat?
- g. Is the incidence of lung cancer less in rural areas than it is in urban areas, and if so what is the per capita consumption of cigarettes in these respective areas?
- h. Is the incidence of lung cancer greater in cold climates than in mild climates and in the south, and if so what is the per capita consumption of cigarettes in the respective areas where this differential seemingly occurs?
- i. The figures of the Damon Runyon Cancer Fund estimate in 1952 twenty-two thousand deaths from lung cancer in the United States in an estimated population of over one hundred fifty million individuals. The report in the New York Herald Tribune as of Sunday, December 13th, quoted the British Medical Society as advising that there were thirteen thousand cases of lung cancer in Great Britain last year. With Britain approximately one-quarter the size of the United States, their incidence of lung cancer would be approximately four times as great as the United States. What are the facts about this and what is the incidence of climate, etc. in the development of lung cancer?
- j. Is it possible that England, with a larger percentage of lung cancer incidence, may possibly have obtained this result due to the fact

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that the tobacco for their cigarettes is not treated in any way with casing? Should the efficacy of casing used in the manufacture of American cigarettes be studied as possibly an antidote to the deleterious effects of tobacco, if any?

- k. With the extension of human life due to miracle drugs, etc. what is the percentage of the increase of lung cancer, if any, comparable to other diseases during the past ten years?
- l. What may be the effect on the significance of statistical comparisons of more accurate diagnosis during the past few years into specific causes of death?
- m. What are the benefits and enjoyment derived from smoking, both by scientific tests and by measurement of smoker reactions and attitudes?
- n. What are the smoking habits of long-lived distinguished public leaders?
- o. What are the human ills erroneously attributed to tobacco over the centuries?

There are many similar lines of inquiry which have so far been pursued without definitive answers. They should be explored still more vigorously, and with still greater resources; and the results studied for their usefulness as a matter of public information.

7. Public Opinion Poll. A national survey of public opinion is needed to determine attitudes toward cigarettes and tobacco held by (a) the medical profession; and (b) the public at large. The results of such a poll should be helpful in developing more effectively the continuing program of public information that may be required to

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offset anti-cigarette propaganda and to give justified reassurance to the public.

8. White Paper. The Committee should distribute as soon as possible a scientific White Paper digesting current available opinion of authorities on cigarette smoking and lung cancer.

9. Relations with the Press. An important function of the Committee will be to see that the pertinent facts are made available to the press.

In addition to any current statements or releases that may be issued, background memoranda of facts may be circulated to the press when occasion requires. The Committee, of course, will be alert to what is being published or said on the subject of concern to the industry and if any misstatements appear, the facts will be offered to proper sources.

In the case of magazines, the facts will be placed in the hands of editors for such use as may suite their purposes. Available for this work will be the publicity staff of public relations counsel. Any publicity activities, of course, will be adapted to current needs and opportunities as indicated by trends in public and professional opinion and discussions.

10. Radio and Television. Millions of people are informed and their attitudes influenced by radio and television. It will be important to keep commentators and other key people in broadcasting aware of the Committee's existence and of any facts it may assemble.

Moreover, the Committee should be on the alert for public discussion programs where spokesmen for the

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facts as the Committee sees them might be welcome. Public relations counsel has a radio and television specialist who can function in this area.

Plans should be explored for giving attention to the positive aspects of smoking through motion pictures suitable for television use as well as group showings.

11. Committee as a source of facts. The work of the committee in the field of public information should be such as to establish the Committee as a reliable source of industry facts on this subject, and a flow of enquiry by mail, telephone and personal visitation most likely can be expected gradually to develop. The committee should develop as rapidly as possible materials, data and statistics bearing on various aspects of the cigarette industry, and have adequate staff to insure meticulous attention to all enquiries from the press or public.

12. Information for special groups. Attention should be given to material on cigarettes going to special groups such as women's clubs, garden clubs and other organizations that have discussion and study programs, and corrections offered in the case of any misinformation noted.

13. Washington Activities. The Washington office and staff of public relations counsel will be available to place accurate and up-to-date information into the hands of appropriate Committees of Congress, Congressmen and Senators from tobacco states, and interested government officials.

14. Materials for company distribution. It is extremely important that the facts and views as developed by the Committee be communicated promptly to

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various elements within the industry itself. Employees, stockholders, distributors, growers and others should know the facts in order that they can speak intelligently when the subject is discussed in their own groups.

15. Medical Groups. The Committee will need to keep abreast of programs of various medical associations and groups.

16. Cooperation of other groups. The Committee should explore and develop to the greatest extent that it can, the possibility of cooperation from allied groups such as growers, retailers and distributors.

CONCLUSION

As already noted, it has not been practical to develop a full program in the brief space of time available. The effort has been to outline a basic policy approach to the problem and to indicate the direction which the activity should take in implementing policy.

We believe that the correct path to follow is one of patient, continuing, sure-footed presentation of the facts to the public — facts supported and documented by careful research.

Appendix E
DEFENDANT'S EXHIBIT DJT 4053

SURVEY IDENTIFICATION

- | | |
|-------------------------|--|
| 1. COUNTRY: | UNITED STATES |
| 2. TITLE: | THE GALLUP POLL |
| 3. DATE: | JUNE 12-17, 1954 |
| 4. SURVEY NUMBER: | AIPO 532 |
| 5. SURVEY ORGANIZATION: | AMERICAN INSTITUTE
OF PUBLIC OPINION |
| 6. SPONSOR: | LEADING REPUBLICAN,
DEMOCRATIC
AND INDEPENDENT
NEWSPAPERS |

Q. 12A. HAVE YOU HEARD OR READ ANYTHING
RECENTLY TO THE EFFECT THAT CIGARETTE
SMOKING MAY BE A CAUSE OF CANCER OF THE LUNG

- | | |
|------|-----------------------|
| 1290 | 1. YES |
| 144 | 2. NO |
| 1 | 0. NO CODE OR NO DATA |
-

Appendix F

Some Answers for the Smoking Public

*Today – from the Industry itself –
comes this 11 Point Report
on one of the Most Contradictory
Issues of our time.*

Tobacco has been an important part of American life for more than 350 years. And throughout its history, tobacco has been both widely criticized and extravagantly praised.

Renewed attention to smoking and health questions in recent months may have given the impression that something new has been found involving tobacco. This has naturally led to questions about the position of the tobacco industry. We want to make our position clear.

Smoking has come in for scientific investigation because of statistical association studies, the meanings of which are still disputed in scientific circles. These studies associated smoking, especially cigarette smoking, with lung cancer incidence and raised many questions for scientific research.

To help answer those questions, the tobacco industry in 1954 established the Tobacco Industry Research Committee, to provide research grants to scientists working in

recognized research institutions. This program is continuing on an expanded scale.

Scientists in all parts of the world have been studying tobacco smoke, conducting experiments with animals, and investigating many possible causes of lung cancer.

No clear-cut answer has resulted. The number of suspects under study has broadened to include viruses, previous lung ailments, environment, heredity, air pollutants, occupational exposures, psychological patterns, constitutional differences, diet, stress and strain and others.

As of today, the basic causes of lung cancer remain unknown.

Here are some pertinent facts developed through lung cancer research:

1. Non-smokers as well as smokers get cancer of the lung.

By far the vast majority of smokers never get the disease. This means that smoking is not necessary to develop lung cancer, and that long-time smoking does not necessarily lead to lung cancer.

2. The widening gap between male and female lung cancer death rates is not consistent with increased smoking by women.

Thirty years ago lung cancer death rates showed three men for every woman. Latest figures show more than six men for every woman. This is contrary to what was expected if smoking were a major fact in lung cancer,

since there has been a big increase in smoking among women since the 1920's.

3. Tobacco smoke has failed to produce lung cancer in animals in research experiments, although other substances have done so.

4. Viruses are among the substances that have resulted in experimental lung cancer in animals.

This is one important reason why the virus theory of cancer causation is getting increased attention.

5. Scientists have been analyzing cigarette smoke for years and have been unable to specify any substance that accounts for lung cancer.

6. Lung cancer death rates differ greatly from city to city and from country to country.

These differences do not conform to smoking patterns. As a result, environment, air pollutants, traffic conditions, and occupational hazards are also getting intensive study.

7. A medical history of previous lung ailments is significantly related to the development of lung cancer.

Medical advances have enabled people with other lung ailments to live long enough to get cancer. Many scientists are finding that cancer often starts at old lung scars left by tuberculosis and influenza.

8. Lung cancer was known to exist long before cigarettes became popular, but was seldom spotted.

Even before the Civil War, a few scientists were warning that the disease was more common than supposed, but was escaping detection because it was hard to diagnose.

9. The increase in lung cancer deaths being reported is due in part to better means of diagnosis, more frequent recognition of the disease, and the growth and aging of the population.

Most cases appear in older people. There is disagreement over how much of the increase results from these factors; some scientific studies say as high as 95 per cent.

10. Studies in the U.S., Canada and England indicate that lung cancer rates are nearing a peak and may level off.

This is not consistent with the theory about smoking.

11. There are several types of lung cancer of differing origin, and it is difficult to tell which is which.

In fact, new studies say that the type of lung cancer being increasingly found is not the type which some have associated with inhaled substances, such as cigarette smoke.

These are some of the reasons why the tobacco industry believes that singling out tobacco is not an accurate reflection of research findings.

The theory involving cigarette smoking is often presented as a simple answer. And some people forget that it is still just a working theory, to be tested by further research, along with other theories.

Scientific advisors inform us that when much more is known about the basic origins of lung cancer, medical science will be able to specify whether a particular factor or factors have a causative role – and whether such a role might be direct or indirect, incidental or important.

Meanwhile, the tobacco industry is cooperating in efforts to learn and to make known all the facts.

Research continues to provide new and broader perspectives. The solutions to our nation's health problems will come through further research – just as research has enabled the American people to enjoy today better health and longer lifetimes than ever before in our history.

The Tobacco Institute, Inc.,

808 Seventeenth Street, N.W.,
Washington 6, D.C.

Proposed Ad No. 2-October 22, 1962

Appendix G

PLAINTIFF'S EXHIBIT 2900

NEW YORK HERALD TRIBUNE, MONDAY, JANUARY 4, 1954

A Frank Statement to Cigarette Smokers

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed.

At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.

Distinguished authorities point out:

1. That medical research of recent years indicates many possible causes of lung cancer.
2. That there is no agreement among the authorities regarding what the cause is.
3. That there is no proof that cigarette smoking is one of the causes.
4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed

the validity of the statistics themselves is questioned by numerous scientists.

We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business.

We believe the products we make are not injurious to health.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

For more than 300 years tobacco has given solace, relaxation and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us.

Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.
2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE.

3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.

This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

TOBACCO INDUSTRY RESEARCH COMMITTEE

5400 EMPIRE STATE BUILDING, NEW YORK 1, N. Y.

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(An organization of flue-cured tobacco growers)
J.B. Hutson, President

UNITED STATES TOBACCO COMPANY
J.W. Peterson, President

Appendix H

DEFENDANT'S EXHIBIT DJT-4064

WEDNESDAY, JULY 24, 1967

The New York Times

TAR IN CIGARETTES LUNG CANCER CLUE

Federal Aide Says Research
Fails to Pin Down 'Culprit'
— Veterans Aid Studies

FILTER VALUE IN DOUBT

Warning Labels on Packages
Are Opposed by Witnesses
at House Investigation

WASHINGTON, July 23 (AP) — Public health officials said today that tiny amounts of tars in cigarette smoke might offer a clue to the possible relationship between smoking and lung cancer.

Dr. John R. Heller, director of the Government's National Cancer Institute, told a House Government Operations subcommittee:

"There is mounting evidence that when tobacco is burned at about 800 degrees there is a chemical change in

certain hydrocarbons which bring about certain cancer causing compounds.

"We do not know which of these compounds is the culprit. They are very complicated chemical compounds about which we need to know more."

View on Warning Labels

Dr. Heller and another official of the Department of Health, Education and Welfare, Dr. Leroy E. Burney, Surgeon General of the United States Public Health Service, declined today to recommend printing of "warning labels" on cigarettes.

"We don't have sufficient evidence at this time" of actual causative cancer agents in tobacco to take such a step, Dr. Burney testified.

The subcommittee chairman, Representative John A. Blatnik, Democrat of Minnesota, asked what the witnesses thought about labeling cigarettes like pills — take only so many a day.

Smiling, Dr. Burney said that he didn't believe "many of us read too much of the fine print on things we buy" and he didn't think it would do much good.

He noted that "I enjoy smoking myself" and said that the Public Health Service felt it should keep smokers informed of its findings but could not go beyond that.

Hopeful as Preventatives

Dr. Heller, in discussing filter tips, said that the important thing was to find out first what was in tobaccos. After this basic information is acquired, he

added, "then preventive steps can be taken, and we think soon."

He declared that "we don't believe any filter can selectively filter out the component or components in the tars that are responsible for lung cancer."

He commented that "we have no desire or intent to join the Anti-tobacco League," that so long as people "enjoy" smoking every effort should be made to make it safe.

Dr. Burney told the subcommittee that "further research - both on the general question of tobacco and its relationship to lung cancer and on the question of filtration or other means of modifying cigarettes - is needed."

He said that the Public Health Service expected to report findings of "real significance" by spring on the basis of a statistical study of 220,000 World War I veterans and their smoking habits.

Nicotine Left in the Clear

WASHINGTON, July 23, (UPI) - Dr. Heller testified that, so far as the scientists knew, the nicotine in cigarettes was "not involved in lung cancer."

Dr. Burney suggested modification of cigarettes to reduce harmful effects.

He said it had been proposed theoretically that cigarettes could be modified in three ways: By changing the

tobacco leaf, by reducing the burning temperature or by filtering some elements from the smoke.

He declared that the Public Health Service felt that it had a duty to issue its July 12 statement of increasing evidence that excessive cigarette smoking was a cause of lung cancer.

He said that the Government was conducting three major investigations of smoking, these being besides that covering veterans: studies involving lung cancer in women and the relationship to lung cancer of occupation and geographical residence.

The primary subject of the subcommittee investigation is the accuracy of advertising asserting that filtertips reduce the hazards of cigarette smoking. The hearing is to be resumed tomorrow.

Mr. Blatnik said today that he was puzzled by the fact that "nobody seems to know much about filters."

"I venture to say that more is being spent to promote the smoking of filter-tip cigarettes than to find the cause of cancer," he remarked.

In the face of much questioning the witnesses pressed the view that they did not know whether the filters reduced smoking hazards. Dr. Burney said that research was "insufficient to warrant a conclusion at this time" on the effectiveness of the filter tips.

The tars, he testified, apparently give to cigarettes the taste smokers enjoy.

Appendix I

PLAINTIFF'S EXHIBIT 2014

Ted Bates & Company

December 8, 1967

CONFIDENTIAL

Mr. Reginald Wells
 Tiderock Corporation
 444 Madison Avenue
 New York, New York

Re: RESEARCH SUMMARY

Dear Reg:

Attached is a written summary of the method and consensus of results from our 4 presearch sessions, as discussed this morning.

The consensus represents the combined opinions of the five of us who attended all four complete sessions, plus our moderator.

For anyone listening to the tapes, it should be noted that when an ad is in first position it usually produces a negative or lukewarm response; when the same ad is in last position, it produces a relatively enthusiastic response. This type of response variation is common in this form of testing, which is why we always conduct sessions in pairs, reversing the order of presentation the second time.

I think the net from these sessions is:

1. The objective "restore controversy" should be changed to "neutralize effect of government action".
2. It may well be that this can better be accomplished by P.R. work among legislators and doctors than through advertising. Smokers already question the government's conclusions about smoking - but they have little knowledge of the lengths the anti-smoking forces are apparently willing to go against the industry and cigarette advertising.
3. If any consumer advertising is done, a direct approach appears called for - the more directly it challenges the Surgeon General's position, the better. But a direct approach runs grave risks of having more negative effects in stirring up public controversy and publicity and bringing on government action than any possible positive effects.
4. An indirect approach would appear to be a mistake.

Sincerely,

/s/ David C. Loomis
 David C. Loomis

DCL/ic
 Attachment
cc: Mr. Rosser Reeves

Ted Bates & Company

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SUMMARY REPORT OF 4 GROUP INTERVIEW

SESSIONS WITH SMOKERS

OBJECTIVE: To determine reaction of representative smokers to 5 possible Tobacco Institute campaign approaches ranging from indirect to direct.

SAMPLES: Respondents were recruited via a screening questionnaire to obtain 4 similar panels of adult male cigarette smokers (4 packs/wk. or more) who had heard of the Surgeon General's report. Each panel was also selected to be representative of the attitudes of smokers in the Agency's recent 20-city survey on 2 questions:

	<u>Proportion of Smokers</u>	
	<u>Agree</u>	<u>Disagree/</u>
		<u>Not Sure</u>
1. The Surgeon General's report on cigarettes is enough to make a person stop smoking.	30%	70%
2. The government has proved to me that smoking causes serious health problems.	50%	50%

The screening questionnaire was used to make sure we had panels who were both aware of and involved in the cigarette/health issue.

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APPROACHES TESTED

Sessions 1 and 2

- a) World Conference on Respiratory Illness - indirect approach - print only.
- b) Cigarette-Health Controversy - middle approach - print only.
- c) "Communism Causes Cancer" - direct approach - print only.

Sessions 3 and 4

- d) "Of Mice and Men and Cigarettes" - direct approach - print and TV.
- e) Smog - indirect approach - print and TV.

SUMMARY OF RESULTS

A. GENERAL

1. A controversy already exists with smokers on the position taken by the Surgeon General's report - but they would prefer not to be reminded of it. Thus the objective of an Institute campaign: "to restore controversy" is probably the wrong one as far as the public is concerned.

Because they are still smoking, smokers are compelled to feel the government has not proved its case. If they want to hear anything, it is reassurance that smoking does not cause lung cancer - not that there is a difference of opinion.

2. Smokers agree that smoking is "unhealthy" - but don't translate this as

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meaning it causes lung cancer or any other specific, potentially fatal, disease. Smoking may cause shortness of breath, a cough or even a shorter life – but they don't expect it to give them lung cancer.

3. The tobacco industry (or the Tobacco Institute) can speak out:
 - a) Smokers do want positive evidence on the "other" side to neutralize the government's position.
 - b) They would prefer the industry to respond immediately to government attacks, rather than after the news has cooled.
 - c) Silence by the industry may, in itself, be a tacit acknowledgment of guilt.
 - d) There is a basic tendency to distrust any presentation of the other side – however factual – by the Tobacco Institute. The industry's motive is assumed to be self-interest – or to "sell more cigarettes". This does not mean that smokers don't want the industry to speak, but that great care must be taken to make it clear that the facts or opinions presented are not "fixed" by the Institute.
4. There is very little awareness of any current or planned government action against cigarettes beyond the Surgeon General's report and the pack warning. Smokers view the issue as one between the government and themselves, as smokers, rather than between the government and the industry.

CONFIDENTIALB. ADVERTISING APPROACHES

1. The direct approaches ("Communism" and "Mouse") produce the strongest initial reactions – both favorable and unfavorable – but a better understanding of what the industry is trying to do.
2. After close study, however, the direct approaches are vulnerable – particularly on the clarity and source of the factual information – plus the basic distrust of anything presented by the industry.
3. The indirect approaches ("Smog" and "World Conference") are also vulnerable on the same grounds.
4. The indirect and middle approaches have additional problems:
 - a) They raise the "controversy" issue, rather than neutralize it.
 - b) They are seen as confusing the issue – or even implying guilt to cigarettes – by suggesting the blame may lie elsewhere.
5. The middle approach ("Cigarette/Health Controversy") was universally assumed to be presenting only one side (the industry's) on first exposure. The 5 anti-smoking doctor's statements were read but not seen. All 10 statements were assumed to be challenging the Surgeon General's report (including the lead statement by the Surgeon General) until the panelists were almost forced to become aware that 5 statements were pro; 5 con.

David C. Loomis

DCL/ic

Appendix I

PLAINTIFF'S EXHIBIT 2920

REPRINTED FROM THE WASHINGTON POST AND OTHER
NEWSPAPERS. TUESDAY, DECEMBER 1, 1970.

*After millions of dollars and over 20
years of research:*

The question about smoking and health is still a question.

For the past two decades, hundreds of scientists have performed thousands of experiments and written millions of words in a dedicated effort to explore the question of smoking and health.

Result. So far, in spite of this massive effort, there are eminent scientists who question whether any causal relationship has been proved between cigarette smoking and human disease - including lung cancer, coronary heart disease, or emphysema. They believe that years more of exhaustive investigation will be required to clear up what is indeed now a muddy picture.

What has been learned is this: establishing cause-and-effect relationships, which have been claimed to exist by government agencies and other groups, is much more complex than originally thought. In fact, even those who claim a cause-and-effect relationship has been proved admit that no particular ingredient, as it occurs in cigarette smoke, has been demonstrated as the cause of any particular disease.

Who sponsored the research

There are those who believe that voluntary health associations have provided the money for most of this research. Others think it was strictly a project of the various U.S. Government departments.

It is true that both have been . . . and continue to be . . . active in this field. But - a major portion of this scientific inquiry has been financed by the people who know the most about cigarettes and have a great desire to learn the truth . . . the tobacco industry.

And the industry has committed itself to this task in the most objective and scientific way possible.

A \$35,000,000 program

In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely non-restrictive funding.

In 1954, the industry established what is now known as CTR, the Council for Tobacco Research - USA, to provide financial support for research by independent scientists into all phases of tobacco use and health. Completely autonomous, CTR's research activity is directed by a board of ten scientists and physicians who retain their affiliations with their respective universities and institutions. This board has full authority and responsibility for policy, development and direction of the research effort. Each researcher receiving a grant has complete freedom to publish the results of his work, whatever the results may be. As of this year, CTR has made grants totalling over 17 million dollars.

In 1964, the tobacco industry made a commitment for additional independent research that now amounts to 18 million dollars. This commitment was made to AMA-ERF, the Education and Research Foundation, which is a research arm of the American Medical Association. The ERF, like the CTR, makes grants for scientific research with complete freedom and autonomy.

What they did

As of November 1970, the Council for Tobacco Research alone has awarded 396 separate grants to scientists in 189 medical schools, hospitals and institutions in this country and five other countries.

The Education and Research Foundation has awarded 168 grants to scientists in more than 70 medical and research institutions.

The combined commitment by the tobacco industry for those projects presently amounts to over 35 million dollars. In fiscal 1969, for example, the tobacco industry's commitment in this area was more than any government department . . . and millions more than the research expenditure on smoking and health reported for the same period by all the voluntary health associations combined.

What they found

The findings of research studies funded in whole or in part by CTR have already resulted in publication of 835 scientific papers in professional literature. Those sponsored by the Education and Research Foundation have resulted in the publication of 280 reports.

1115 reports in all. Through this work much valuable data have been produced about lung cancer, heart disease, chronic respiratory ailments and other diseases. However, there's still a lot more to be learned.

The findings are not secret

All the above reports have been published in medical and scientific journals in the United States and other parts of the world.

These documents are available to scientists and doctors interested in pursuing the scientific truths on the smoking and health issue.

The work should go forward

There are eminent scientists who believe that the question of smoking and health is an open one and that research in this area must go forward

From the beginning, the tobacco industry has believed that the American people deserve objective, scientific answers.

With this same credo in mind, the tobacco industry stands ready today to make new commitments for additional valid scientific research that offers to shed light on new facets of smoking and health.

These facts and statements are presented by The Tobacco Institute in the belief that the many controversial questions concerning smoking and health must ultimately be answered by further scientific research and new knowledge – and that full, free, and informed public discussion is essential in the public interest.

For further information, we invite you to read
"The Cigarette Controversy." Write to:

[ti
 Logo]

The Tobacco Institute
 1776 K Street, N.W.
 Washington, D.C. 20006

Appendix K

PLAINTIFF'S EXHIBIT 1325

September 3, 1971

MEMORANDUM

CONFIDENTIAL

TO: Horace R. Kornegay

FROM: William Kloepfer, Jr.

SUBJ: Report on meeting at AMA re ERF tobacco program

According to Dr. Howard, AMA's executive director with whom I met today at Ted Braun's request, AMA is not prepared to make any statement regarding termination of the smoking-health research program, knows of no statement which would not further damage the images of both itself and the tobacco industry, and is under no internal pressure to make any move at this time in the matter.

At nine a.m. today, an hour before our meeting with Howard and the AMA p.r. director, Frank Campion, Braun told me that our purpose in seeing Howard was to notify him that the "executive committee" had rejected a recommendation that surplus ERF tobacco funds be earmarked for "minority group" medical student support.

Braun told me this recommendation had come from Dr. Kernodle, vice-chairman of the AMA (and ERF) board of trustees. He said he recently discussed the entire situation (prior to the last meeting of the TI executive committee) with Howard and Kernodle in a three-way phone conversation. One result of that was, Braun said, that Kernodle was to discuss the whole situation with you prior to the New York meeting.

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Howard's response to Braun's notification this morning was that the funds would therefore be used by ERF to continue supporting already approved projects. (The current letter of agreement from the companies to AMA evidently stipulates that in no event are any funds to be returned to the contributors.) As to how much money is at stake: Howard gave Braun a written accounting, which Braun has kept, showing 1) that the residual fund now amounts to \$1.3-odd million and 2) that except for Brown and Williamson, all the participating companies are in arrears on 1970 contributions - in each case a six-figure amount, with RJR the highest at more than \$600,000. Howard said AMA will refund B & W's 1970 payment of some \$270,000 if B & W wishes, from the current \$1.3 million balance.

Howard made it clear that ERF does no research other than that funded by tobacco companies, that there is no basis for and will not be any AMA announcement that it is ending "all its research programs," and that its announcement last year of the closing of its internal research institute has no connection with the present matter. (After the meeting Braun told me that Howard previously said the termination of this program would be in the context of AMA ending "all" research activities; he said Howard has changed his view on this. However, we of the staff have kept very close track of all AMA-ERF reports, and have never seen any indication of research projects other than smoking and health.)

Howard further indicated that if the cigarette companies wish to cancel their current commitment, he would like to have a suitable letter to that effect.

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Howard said he regards the program as a great liability - that from AMA's view it has only caused further blackening of AMA's image. He said from the industry's standpoint the research has produced no evidence to clear cigarettes from the generally accepted conclusion that they cause "lung carcinoma" and other maladies. He said he thought the latter point would be widely reported as the reason the industry decided to terminate the program, regardless of what is said by either party about it. Howard also made these points:

1. He is most anxious to avoid any incident which will create displeasure with AMA among tobacco area Congressmen - he said AMA needs their support urgently.
2. He is told that 85% of the ERF research with tobacco funds has been "useful basic research" but that through neglect by all concerned no effort has really been made to impress anyone in or out of AMA with this.
3. There will be a "national meeting in October" of the ERF grantees, similar to those held in San Francisco in 1968 and Scottsdale in 1970, and he does not at this time propose to cancel the meeting. (It has been our understanding that the next meeting of the grantees was to be held in 1972 - it may be that Howard is mistaken about this.)
4. He will inform only Kernodle of this morning's discussion, and Campion will discuss it with no one.
5. He does not now intend to remind the four companies with respect to their arrears.
6. He and Campion, as well as ourselves, should continue to consider what might be done, and what

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response might be made if there is any unlikely leak over the current discussions.

/s/ K

Appendix L

PLAINTIFF'S EXHIBIT 1105

May 1, 1972

MEMORANDUM

CONFIDENTIAL

TO: Horace R. Kornegay

FROM: Fred Panzer /s/ FP

SUBJECT: The Roper Proposal

GENERAL COMMENTS

It is my strong belief that we now have an opportunity to take the initiative in the cigarette controversy, and start to turn it around.

For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts - litigation, politics, and public opinion.

While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not - nor was it intended to be - a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of

- creating doubt about the health charge without actually denying it
- advocating the public's right to smoke, without actually urging them to take up the practice
- encouraging objective scientific research as the only way to resolve the question of health hazard

On the litigation front for which the strategy was designed, it has been successful. While we have not lost a

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liability case, this is not because juries have rejected the anti-smoking arguments.

On the political front, the strategy has helped make possible an orderly retreat. But is fair to say that it has not stemmed the pressure for new legislation, despite the major concessions we have made.

On the public opinion front, however, our situation has deteriorated and will continue to worsen. This erosion will have an adverse effect on the other fronts, because here is where the beliefs, attitudes and actions of judges, juries, elected officials and government employees are formed.

THE STRATEGIC IMPASSE

As an industry, therefore, we are committed to an ill-defined middle ground which is articulated by variations on the theme that, "the case is not proved." As the recent history of U.S. involvement in Vietnam demonstrated, it is impossible to hold the public on a middle course for any length of time. There seems to be no way that mass public opinion can engage in a controversy and choose an answer that goes beyond the range of either/or.

In the cigarette controversy, the public – especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smokers) – must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor.

As things stand, we supply them with too little in the way of ready-made credible alternatives.

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THE ALTERNATIVES

Two such credible alternatives exist:

- 1) The Constitutional Hypothesis i.e. people who smoke tend to differ importantly from people who do not, in their heredity, in constitutional makeup, in patterns of life, and in the pressure under which they live.
- 2) The Multi-factorial Hypothesis i.e. as science advances, more and more factors come under suspicion as contributing to the illnesses for which smoking is blamed – air pollution, viruses, food additives, occupational hazards and stresses.

Our 1970 public opinion survey showed that a majority (52%) believed that cigarettes are only one of the many causes of smokers having more illnesses. It also showed that half of the people who believed that smokers have more illness than non-smokers accepted the constitutional hypothesis as the explanation.

Thus, there are millions of people who would be receptive to a new message, stating:

Cigarette smoking may not be the health hazard that the anti-smoking people say it is because other alternatives are at least as probable

The Roper Proposal would be a persuasive (if not strictly scientific) medium for this message, which we have done little to develop in a systematic or comprehensive way.

Following is my outline of the steps required to start a shift in public opinion if the Roper Proposal is accepted.

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A SCENARIO FOR ACTION

1) Select a panel of experts to consult on the design of the study. Ideally they would be prestige figures who would initially have a solid contribution to make and who would also be willing to endorse the study publicly at a later stage.

2) Conduct the pilot study.

3) If favorable, present the results to carefully selected members of the following key groups:

Senate
House
Cabinet
White House
State Governors
Medical School and University Presidents
Scientific bodies

The purpose is two-fold (a) to gain the support and participation of friends and (b) to neutralize any adverse action they may be brewing. For example: By seeing Secretary Butz at this time we might gain some degree of participation from the Agriculture Department. By seeing Secretary Richardson we might possibly forestall a PHS anti-smoking drive.

4) Conduct the full scale survey.

5) If the results are favorable, release them as a book in both hard cover and paper back version, hopefully published by a legitimate house. In effect, such a volume would be a counter - Surgeon General's Report. The principal authors would be Burns Roper and an eminent research scientist. The advisory panel - hopefully broadened as a result of Step 3 - would write the

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introduction. The industry's funding role would be fully acknowledged.

6) As a book the material would be marketed and promoted in all the many ways available: magazine condensation, TV and Radio talk shows, newspaper reviews and interviews, advertising, gift distribution, etc. etc.

And best of all, it would only have to be seen - not read - to be believed . . . just like the Surgeon General's report.

FP/kc

cc: M. Kastenbaum
W. Kloefer, Jr.

Appendix M

PLAINTIFF'S EXHIBIT 939

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Lorillard

MEMORANDUM

June 24, 1974

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TO: Mr. C. H. Judge

FROM: A. W. Spears

Before attempting to discuss CTR, a brief review of the organizations contributing to research into tobacco and health seems to be appropriate. Perhaps the simplest way to review the subject is to list the organizations and/or category of organization and general areas of research which they are pursuing.

1. Harvard Project - effect of smoke on host genetics and lung function; especially, lung defense mechanisms as mediators of bronchitis and emphysema.

2. Washington University - early detection of cancer by immunological methods and function of the immune system in tumor regression and/or prevention.

3. UCLA - macrophage morphology and function differences between smokers and nonsmokers. Cancer immunology, early diagnosis through cell culture methods and cancer chemotherapy.

4. Chemical Companies - development of tobacco substitutes using chemical and bioassay methods to indicate differences from tobacco. Some human experiments relating to bronchitis are being conducted.

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5. Filter Companies - development of filters which alter composition of tobacco smoke. Total particulate reduction, vapor phase reduction and reduction of carbon oxides and oxides of nitrogen.

7. Tobacco Research Council - Harrogate Laboratories have been sold, but research on inhalation and cellular effects of smoke continue under contract. Also, it would appear that some results of Harrogate studies are being pursued directly by individual companies in house. The aim would be highly product orientated.

8. University of Kentucky - broad spectrum of chemical and bioassay development programs. Epidemiology into smoke dose obtained by smokers who enter hospital and those that do not. Primary emphasis seems to be tumorigenesis and chronic pulmonary disease. Program does include agronomical aspects.

9. USDA - program is concentrated on new varieties, curing process, etc. as means of manipulating tobacco. Program utilizes NCI bioassay systems and chemical analysis of smoke.

10. State Agriculture Research - program relates to pesticide residues and breeding for low tar and nicotine.

11. Tobacco Sheet Manufacturers - attempting to make tobacco sheets with improved bioassay results. Utilizing NCI and German Institute for bioassay.

12. NCI and NHLI - programs relate to development of bioassay system for tobacco smoke. Evaluation of

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different products by these bioassay procedures is prime part of program. Emphasis is on tumorigenicity, but programs for cardiovascular disease and chronic pulmonary disease are being initiated.

13. Ad Hoc Committee - most research is epidemiological in nature. Program is primarily aimed at seeking alternate hypothesis of disease causation.

14. CTR - epidemiology, bioassay development, genetics, primarily aimed at tumorigenesis and chronic pulmonary disease, but some activity in cardiovascular disease and smoking motivation

Exclusive of the CTR program, the total annual research funding of the listed organizations is on the order of 25 million dollars directly related to smoking and health. Additionally, the federal government is spending on the order of 700 million in the general disease areas of cancer, chronic pulmonary disease and cardiovascular disease. Clearly, CTR is conducting research in a highly competitive area, and the programs must be well conceived and targeted to avoid unwanted duplication and produce significant results.

Sometime ago (1970), the CTR program was evaluated by the Research Directors. At that time, it was felt that the desired aims of the CTR program could be stated as:

1. To define the effects of cigarette smoke on the human system.
2. To conceptualize and explore other hypotheses relative to the smoking and health question by epidemiological and other appropriate methods.

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3. To define motivational mechanisms of smoking using laboratory animal models as well as human populations.

Following the Harvard funding, B & W suggested that CTR be reorganized and redirected. Their suggestion was basically to expand efforts on the motivational aspects of smoking and to become supportive of Harvard in other areas of research. They also proposed that the scientific director of CTR be supported by an advisory board and specialized staff members. They proposed a working group for overall coordination consisting of Harvard Scientific Directors, CTR Scientific Directors and industry representatives.

From what has been said to this point, it seems obvious that a multitude of research organizations are involved in the area of smoking and health research. Additionally, U.S. sponsored research into the disease areas associated with smoking are two orders of magnitude above industry spending. Previous suggestions for narrower research aims of CTR have been reflected in their recent program, but overall coordination of industry sponsored research has not been achieved. It is also apparent the coordination or at least planning information must be obtained from as many as a dozen organizations if duplication is to be avoided and intelligent planning of short and long range objectives are to be accomplished. Also, it is apparent that numerous organizations are newly involved in chemically and biologically based research toward product modification. The most obvious of these in the U.S. are NCI, the USDA and the The University of Kentucky.

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Historically, the joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings. In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious strategy. However, the public and political attitude toward smoking has seriously decayed with respect to the tobacco industry, and scientific and political attack has become intense, with efforts at forced product modification underway. Thus, we see the litigation threat of much lesser importance than that of legislative and public acceptance of cigarette smoking. This suggests that goals should be defined more on the basis of scientific aspects, public relations and the programs leading to such goals coordinated more by business and scientific management.

We see no way to coordinate without an organization and responsibility to coordinate.

The writer believes that only two mechanisms exist for this coordination: (1) a working committee of industry representatives and (2) appointment of one individual for that purpose, with overall program and fiscal responsibility.

In the past, and currently, the Committee approach is in effect being used (Committee of Council). However,

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representative of the Committee generally lack the background to bring about scientific coordination and the time to bring about management coordination.

It is suggested that CTR be combined with the Tobacco Institute administratively, and that an industry committee along with the staff of the Institute and CTR be designated to help define programs. It is further suggested that the programs at Harvard and Washington University be brought under the same committee, and the Scientific Director of CTR. In addition to providing structure for coordination, we believe that more efficient use of information for public relations and legislative activities is to be gained and reductions in administrative and legal fees can be effected.

In looking specifically at the CTR program on a financial basis, as shown below one is struck by the fact that approximately 51% of the budget is associated with cancer related studies. Certainly, one would like an analysis of how much of this work is distinct from the 500 million being expended by NCI and the overall and specific objectives of the CTR research in this area. Another 18% is being expended in the area of lung and pulmonary disease. Again, what are the objectives, and how do they relate to Harvard and all other organizations, particularly Harrogate? Approximately 11% of the budget is associated with cardiovascular research, and of this only 44%, or 5% of the total budget, is directed at arteriosclerosis. Approximately 3.5% of the budget is devoted to motivational research, and 5.6% in epidemiology covering the three major disease areas. A miscellaneous category appears to be generally supportive of the other activities, and represents 11% of the budget.

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From a review of the individual projects under the cancer heading, one can reasonably describe the experimental objectives.

1. Investigate the factors, AHH, immune competence, strain, viral infection, Vitamin A, etc. as mediators of the carcinogenic response to chemicals in the small animals.
2. Develop hardware and facilities for long term chronic smoke inhalation studies with a tumorigenic end point.
3. Determine tumorigenic activity of smoke fractions.
4. Determine if reported environmental carcinogens interact with tobacco smoke.
5. Develop new short term bioassay systems for carcinogenesis.

A review of the individual projects under lung and pulmonary studies indicates that the objectives are diffuse compared to cancer.

1. Determine effect of smoke by chronic inhalation in mice.
2. Explore various facets of lung metabolism, defense mechanisms, etc.

Appendix N

PLAINTIFF'S EXHIBIT 1708

12/10/74

True WorkingStrategy RecommendationI. Introduction

True, the first popular, Super Hi-Fi cigarette, had been gaining sales at a decreasing rate during the two years prior to 1974. In 1974, the brand has levelled off, and will lose share leadership of the Super Hi-Fi category for the first time since its introduction.

This document will present a working strategy recommendation for the communications direction which it is believed will be most efficacious in reversing the recent trend in True's sales. It is based upon an extensive review of the following data:

- The Switching Study
- True Group Sessions
- Maxwell Reports
- Competitive Advertising Review
- The Expert Panel Report

II. Who Are The Potential True Smokers?

Demographically, they are upscale in both income and education. 61% of them are women.

The real key however lies in certain psychographic characteristics which transcend demographics, brand characteristics and even cigarette categories, and tend to make a smoker "True Prone". It is to this psychological core running across brand and category definitions that we must direct our True communications.

We are talking of people who for the most part are currently smoking either a Hi-Fi, or a Lo-Fi cigarette. They are probably on the verge of a conscious decision regarding smoking. They are seriously considering switching to a Super Hi-Fi cigarette. Although this attitude may be generated by any number of reasons, three of the key ones are:

- They really want to quit smoking and can't and feel that SHF is a "way station".
- They have tangible signs (such as morning cough) that their current brand of cigarette could be harming their health.
- They seek a compromise between quitting and continuing with their current brand. They see a Super Hi-Fi brand as one which will enable them to continue smoking and live with themselves.

Some of these smokers will look for the taste benefits of their current brand in the Super Hi-Fi category. A high percentage of them will go to XXXXXXXXXXXX* (the latter two appear not to be fully perceived as Super Hi-Fi cigarettes. And, indeed, are not advertised as Super Hi-Fi's).

The Smokers we are interested in are different. Their overriding concerns are health and the desire to quit smoking. This combination generates a sacrificial behavior pattern which makes it impossible for this group to accept a full flavor, Super Hi-Fi cigarette. To draw a comparison, the True prone group may be seen as the "Listerine" users of the cigarette market, due to their obvious sacrifice of taste for health. They see True as a healthy cigarette and the proof of this is in it's lack of taste. (This comparison has strategic implications for True inasmuch as it could pre-empt XXXXXXXXXXXX* in the Tar & Nicotine area and prove extremely competitive to that segment of

*Material redacted as is original exhibit.

the XXXXXXXXXXXX* franchise not concerned with taste). They are opinionated smokers who place great emphasis on the "modern" and/or scientific.

As a group they are lighter smokers than the XXXX-XXXXXX* prone group due to:

- The skew toward women.
- The desire to quit smoking entirely.

III. Communications Objective

To pinpoint and attract the True prone smoker with an effective communications program without alienating the current True franchise.

IV. Strategy

A. To touch the emotional and/or intellectual pressure points associated with the decision to move to True. For example:

- The decision to quit smoking.
- The True brand as a compromise that the concerned smoker can live with.

B. To recognize the dichotomy of the Super Hi-Fi category in terms of the following segments:

- Taste Brands

• XXXXXXXXXXXX*

• XXXXXXXXXXXX

• XXXXXXXXXXXX*

(which although not totally perceived as Super Hi-Fi brands are categorized here for strategic purposes)

* Material redacted as is original exhibit.

- Health Brands

- True
- XXXXXXXXXXXX* (which may have something of a taste image)
- XXXXXXXXXXXX*

By designing our communications to appeal to those characteristics of smokers who are prone to enter the health segment of the Super Hi-Fi market.

- C. To recognize that the bulk of new consumers will come from the Hi-Fi and Lo-Fi segments of the market.
- D. To present a candid, forthright image of True which portrays the brand exactly as it is and does not over-promise in terms of flavor benefits.

V. Support

- A. The sales position of True vis-a-vis the Super Hi-Fi category is supported by the Maxwell Reports over the past three years.
- B. Demographically, the True prone smoker is quite similar to the current True smoker (see attachment I for detailed comparison). The key differences are in the younger and more even geographic skews of the True prone smoker versus the current True smoker.
- C. The fact that True prone smokers are currently in Hi-Fi and Lo-Fi categories is supported by:
 - The switching study which showed that:
 - XXXXXXXXXXXX* is the single largest brand source for True (4 out of 10 defectors go to True). XXXXXXXXXXXX* Previous smokers represent 15% of True's franchise.

* Material redacted as is original exhibit.

- 50% of True's total franchise came from the lo-fi category.
- 2/3 of True's gains in the last two years have come from lo-fi.
- Although the switching study does not show movement from XXXXXXXXXXXX* to True the demographic profile of the XXXXXXXXXXXX* smoker is similar to that of the True smoker, suggesting possible potential.
- One of four True prone smokers currently smokes a hi-fi brand vs. one of six XXXX-XXXXXX* prone smokers.
- The size of the segments (Hi-Fi and Lo-Fi) make them a necessary target for a brand seeking to increase volume.
- The Hi-Fi category has lost share over the last 5 years (13.4% to 12.1%) on a steady annual basis indicating an inherent vulnerability, especially in light of the dramatic growth (+140%) posted by the Super Hi-Fi category over the same period.
- XXXXXXXXXXXX* has a weak growth pattern over the last three years.
- D. While not universally projectable, the group sessions seem to indicate that the Super Hi-Fi decision is a conscious one, based upon the reasons mentioned earlier. They go on to point out that to a great extent people who move to True punish themselves through their conscious disavowal of taste.
- E. The demographic profiles of True vs. XXXX-XXXXXX* indicate a dichotomous Super Hi-Fi market, with True having great appeal to

* Material redacted as is original exhibit.

upscale woman, residing in the urban centers of the Northeast and the West Coast, and XXXXXXXXXXXX* being masculine, and geographically oriented toward the traditionally strong XXXXXXXXXXXX* areas in the South.

The group sessions tend to support this view of two Super Hi-Fi categories with respondents categorizing XXXXXXXXXXXX* as a taste brand, (while this seems contradictory to the incentives reported in the switching study, perhaps the split between low T&N and flavor so pronounced in True prone consumers does not effect XXXXXXXXXXXX* smokers the same way. In addition, almost twice as many XXXXXXXXXXXX* smokers claim taste as their reason for smoking than do True smokers) and XXXXXXXXXXXX* primarily as line extensions of full flavored cigarettes. True, XXXXXXXXXXXX* are seen as "health" categories.

The expert panel data indicates the low taste level of True vis-a-vis an assortment of cigarettes.

- F. Yankelovich Data suggests that the current True smoker is less likely to desire a "natural" lifestyle. He looks for the convenience of the modern world, and tends to rely upon the scientific. Translated to smoking terms he accepts the reduced flavor level of True as part of the scientific advance of reducing tar and nicotine, and since he has no desire for a natural (full flavor) smoke has little problem accepting the "artificial" flavor of True.

* Material redacted as is original exhibit.

Attachment I

True Vs. True Prone Demographics

*Purchase for (illegible) &/or substitute**

Sex	True Smoker	True Prone Smoker
Male	37	39
Female	63	61
Age		
21-34	36	49✓*
35-49	34	27
50+	29	24
Income		
Under \$7,500	12	16
\$7,500 - \$14,999	31	36
\$15,000+	33	31
Education		
Some High School	10	15✓*
Finished High School	39	33
Any College	49	52
Geographics		
East	37	27
Central	23	28
South	21	27
West	20	18
Ethnicity		
White	93	92
Black	1	7
Other	2	1
Occupation		
Blue Collar	15.7	15
White Collar	42.7	49

* Handwritten notes on original.

Appendix O

PLAINTIFF'S EXHIBIT 2745

PHILIP MORRIS U.S.A.

INTER-OFFICE CORRESPONDENCE

100 Park Avenue, New York, N.Y. 10017

Date: March 24, 1981

CONFIDENTIAL

To: • Mr. H. Cullman/Mr. J.C. Bowling
 From: • J. J. Morgan

Subject: •

At a meeting yesterday with Burson Marsteller attended by Kloefer, Ave and myself, a decision was reached to present the following draft statement to the full Communications Committee at our meeting of March 31 for review for submission to the Executive Committee at their meeting of April 8/9:

"The Communications Committee is committed to instituting national advertising to reinforce the smoker, his choice to smoke and the custom of smoking.

This will be accomplished by:

- attacking bad research
- attacking researchers themselves, where vulnerable
- attacking the unreasonableness of legislative segregation
- exposing the bureaucracy and personal aggrandizement of certain anti-smoking organizations.

In effect, the Communications Committee is readying advertising to stand up to the industry's detractors and by that means support our smoking population."

While the final language of this statement might change, I think you will sense a direction which is a straight line out of our meeting last Thursday. Ave indicated to me that Judge and Stevens as well as Horrigan are thinking this way.

/s/ J

JJM/mm

cc: S. P. Pollack
 T. F. Ahrensfield
 A. Holtzman

Appendix P

PLAINTIFF'S EXHIBIT 2935

THE NEW YORK TIMES, MONDAY, JANUARY 30, 1984

© 1984 R.J. REYNOLDS TOBACCO

Can we have an open debate about smoking?

The issues that surround smoking are so complex, and so emotional, it's hard to debate them objectively.

In fact, many of you probably believe there is nothing to debate.

Over the years, you've heard so many negative reports about smoking and health – and so little to challenge these reports – that you may assume the case against smoking is closed.

But this is far from the truth.

Studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary. These scientific findings come from research completely independent of the tobacco industry.

We at R.J. Reynolds think you will find such evidence very interesting. Because we think reasonable people who analyze it may come to see this issue not as a closed case, but as an open controversy.

We know some of you may be suspicious of what we'll say, simply because we're a cigarette company.

We know some of you may question our motives.

But we also know that by keeping silent, we've contributed to this climate of doubt and distrust. We may also have created the mistaken impression that we have nothing to say on these issues.

That is why we've decided to speak out now, and why we intend to continue speaking out in the future.

During the coming months we will discuss a number of key questions relating to smoking and health. We will also explore other important issues including relations between smokers and non-smokers, smoking among our youth, and "passive smoking."

Some of the things we say may surprise you. Even the fact that we say them may prove controversial.

But we won't shy away from the controversy because, quite frankly, that's our whole point.

We don't say there are no questions about smoking. Just the opposite. We say there are lots of questions – but, as yet, no simple answers.

Like any controversy, this one has more than one side. We hope the debate will be an open one.

Appendix Q

PLAINTIFF'S EXHIBIT 964

C.T.R. Meeting*

Yeaman, Gardner, Hockett, Stevens, Judge

Yeaman To give us cash-flow analysis comparing commitments vs. payout.

1. Fixed
2. Anticipated extensions or renewals which may or may not occur.
3. Moral obligations — or "fact of life"
3. [sic] See page 3
4. Fractionization studies in the main.
5. For March & Sept submissions to S.A.B.

Quality of Investigators and the work done has improved dramatically because:

1. Targeted research
2. Availability of federal funds down so tobacco money ain't so dirty any more.

Good research generates good research.

Yeaman Difficulty in justifying budget incr — "We're trying to prove a negative"

"CTR is best & cheapest insurance the tobacco industry can buy and without it the Industry would have to invent CTR or would be dead."

* Entire document is handwritten notes.

Take out if required:

- | | | |
|-------------|---|--|
| |) | 1.) Chem compounds in whole smoke. |
| |) | CONTRACT. 12 fractions which abett |
| |) | known carcinogus in cancer formats |
| |) | |
| |) | One of the fractions is a cancer inhibi- |
| \$360,000 I |) | tor. |
| 220,000 II |) | |
| |) | How many cigarettes to produce a sig- |
| |) | nificant amount of the compound. |
| |) | |
| |) | Others doing this kind of work — (e.g., |
| |) | Polarium) |
| |) | |
| |) | We'd better know more about smoke |
| |) | components than anyone else. |

Study on

- Children of smoking parents — respiratory infec-
- tions.
- Pregnant mothers
- Nicotine collection sites — STRESS

#3. explanation

- ➡ McLeavin (Colo) \$165M mice
- related Reid \$120M pulmonary — outstanding
- ➡ Coumpacker (Colo-Sweden) \$195M twins
- Kaiser-Permarieute \$ 90M twins
- Boise \$ 8.5M

*Appendix R***Background on . . .****Tobacco and Health Research**

The subject of smoking and health continues to make news. Charges against tobacco have been widely publicized, but less attention is given to the views of those who do not accept these charges.

Tobacco has been the subject of broad criticism, and extravagant praise, throughout its history.

In the past few years there has been considerable attention to tobacco, especially cigarettes, because of charges that smoking was actually causing certain diseases, especially lung cancer. The charges were based on statistical association studies, which spurred a great deal of research to learn more about the causes of the diseases in question, and to determine whether smoking was involved.

Recently revived interest in tobacco and health may have given the impression that something new has been discovered to implicate tobacco. This is a misleading impression.

Actually "Much research reported in the past few years has tended to weaken, rather than to support, the hypothesis that cigarette smoking is a causative factor in lung cancer."

That is the report of Dr. Clarence Cook Little, a cancer researcher for 54 years and former Managing Director of what is now the American Cancer Society. Dr. Little is the Scientific Director of the Tobacco Industry

Research Committee, which awards research grants to independent scientists who conduct their own research and publish their own findings, with no strings attached.

The tobacco industry recognizes that it has a special responsibility to help scientists determine the facts about tobacco and health. The industry has shown its determination to do so by providing financial support to the T.I.R.C., and by turning over full control of the T.I.R.C.'s research program to a Scientific Advisory Board composed of experienced doctors and scientists.

We believe that research alone will provide the answers to the health problems of our nation. Until research does provide the answers, the industry has an obligation to the millions who enjoy tobacco products and to those who depend on tobacco for their livelihood to keep the record straight.

Here are some facts about the situation:

Scientists in various parts of the world have been conducting intensive studies on the possible effects of tobacco on human health. Many important, relevant clinical and laboratory studies do not support those who say tobacco is a cause of lung cancer or heart disease.

The most notable thing about research into lung cancer and heart disease is that new scientific findings keep broadening the range of suspects that must be studied.

In lung cancer research, scientists are producing increasing evidence that viruses may play a role. Other scientists cite previous lung infections, particularly tuberculosis, as having a connection. Environment is another major area. Studies show that lung cancer rates vary

widely between urban and rural areas, between cities of similar size and area, and between different countries – and these variations do not conform to smoking patterns. Other factors are also being studied, including heredity and nutritional deficiencies.

In heart research, scientists are looking into the effect of stress and strain, lack of exercise, heredity, diet, hormonal differences, tobacco use and many other possibilities. It is worth noting that heart disease is the leading cause of death among non-smokers, as well as among smokers.

This does not mean that smoking does not need further study. It does show that singling out tobacco is not an accurate reflection of overall research findings.

Those who believe tobacco is responsible for various ailments still rely largely on statistical association studies. Much clinical and laboratory research done in recent years has not substantiated this belief. The statistical association studies have come in for much critical analysis as to their meaning. Most biostatisticians agree that association studies do not prove cause and effect.

The urgent need today is for sound research to determine the facts about our health problems, which are admittedly different since more people are living longer. (The average lifespan in America has increased from 54.1 years in 1920 to 69.7 years in 1959. Most lung cancer cases occur after age 55.)

The major problems of concern are the origins of cancer and heart disease. Studies of tobacco should be continued, along with studies of other suspects. However, caution is needed in evaluating suggestions or

claims that this or that single factor is the culprit. Acceptance of simplified answers may only obscure the real state of knowledge and perhaps delay or divert the research necessary to find the real answers.

The current status of lung cancer research, as it relates to questions concerning tobacco and health, will be reviewed in greater detail tomorrow.

The Support of Research By the Tobacco Industry

Since 1954, tobacco growers, auction warehousemen and manufacturers have been supporting the Tobacco Industry Research Committee's program of independent research into all aspects of tobacco use and health.

Research policy and program is determined by a Scientific Advisory Board of nine noted doctors, scientists and educators. They are authorities in their respective fields and maintain their affiliations with their own institutions. These men develop the research policy, determine areas of research interests and award grants-in-aid for research by independent scientists. Funds are appropriated by the Committee as needed by the Board.

Chairman of the Advisory Board is Dr. Kenneth Merrill Lynch, Chancellor of the Medical College of the University of South Carolina.

The Scientific Director of the T.I.R.C. is Dr. Clarence Cook Little, world-renowned cancer researcher and for 16 years the managing director of what is now the American Cancer Society. Dr. Little is former president of the Universities of Main and Michigan, and the founder of the Roscoe B. Jackson Memorial Laboratory in Bar Harbor, Maine.

Since the start of the program, over 500 research grants and renewals have been made by the Advisory Board to more than 80 scientists in universities, hospitals and other research institutions, including the following universities: California, Chicago, Harvard, Johns Hopkins, Maryland, Michigan, Texas, Virginia. Some 275 scientific papers have been published that credit T.I.R.C. for support in whole or part.

Issued by:

**Tobacco Industry
Research
Committee**

*150 East Forty-Second Street,
New York 17, N.Y.*

Endorsed by:

**The Tobacco
Institute, Inc.**

*808 Seventeenth Street,
N. W.,
Washington 6, D.C.*

whose combined membership includes the following:

The American Snuff Company The American Tobacco Company, Inc. The Bloch Brothers Tobacco Company Bright Belt Warehouse Association Brown & Williamson Tobacco Corporation Burley Auction Warehouse Association Burley Tobacco Growers Cooperative Association Burley Stabilization Corporation G. A. Georgopulo & Co., Inc. George W. Helme Company Imperial Tobacco Company, Ltd. Larus & Brother Company, Inc. Lieberman Tobacco Company Liggett & Myers Tobacco Company P. Lorillard Company, Inc. Maryland Tobacco Growers Association Philip Morris, Inc. R. J. Reynolds Tobacco Company Peter J. Schweitzer, Inc. Scotten, Dillon Company Stephano Brothers, Inc. Tobacco Associates, Inc. United States Tobacco Company

Appendix S

ORIGINAL FILED
MAY 31 1985
ALLYN Z. LITE CLERK

PORZIO, BROMBERG & NEWMAN

A Professional Corporation
163 Madison Avenue
Morristown, N.J. 07960
(201) 538-4006

Attorneys for Plaintiff Antonio Cipollone

-----x	
ANTONIO CIPOLLONE,	: UNITED STATES
individually, and as	: DISTRICT COURT
Executor of the Estate of	: FOR THE DISTRICT OF
Rose D. Cipollone,	: NEW JERSEY
	:
Plaintiff,	: HON. H. LEE SAROKIN
	:
vs.	:
LIGGETT GROUP, INC., a	: DOCKET NO.
Delaware Corporation;	: 83-2864 SA
PHILIP MORRIS	:
INCORPORATED, a Virginia	: THIRD AMENDED
Corporation, and LOEW'S	: COMPLAINT AND
THEATRES INC., a New	: DEMAND FOR
York Corporation,	: TRIAL BY JURY
	:
Defendants.	:
	:
-----x	

Antonio Cipollone individually, and as Executor of the Estate of Rose D. Cipollone, residing at 96 Berlotto Avenue in the town of Little Ferry, County of Bergen, State of New Jersey, by way of Complaint against the defendants says:

FIRST COUNT

1. Plaintiff is a citizen of the State of New Jersey, and is the widower of the decedent, Rose D. Cipollone.
2. The decedent, Rose D. Cipollone, resided in New Jersey from 1960 until her death in October, 1984.
3. Defendant Liggett Group, Inc. is a corporation, incorporated under the laws of the State of Delaware and has its principal place of business in a state other than New Jersey.
4. Defendant Philip Morris Incorporated is a corporation, incorporated under the laws of the State of Virginia and has its principal place of business in a state other than New Jersey.
5. Defendant Loew's Theatres Inc. is a corporation, incorporated under the laws of the State of New York and has its principal place of business in a state other than New Jersey.
6. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.
7. This court has original jurisdiction over the within matter under 28 U.S.C. §1332(a)(1).

SECOND COUNT

1. From approximately 1942 through 1982 defendant Liggett Group Incorporated individually and/or its predecessor in interest, hereafter referred to as "LIGGETT GROUP, INC.," was in the business of manufacturing and selling Chesterfield cigarettes and L & M cigarettes and placed them in the stream of commerce.

2. From approximately 1942 through 1982 defendant Philip Morris Incorporated individually and/or its predecessors in interest, hereafter referred to as "PHILIP MORRIS, INCORPORATED" was in the business of manufacturing and selling Virginia Slims cigarettes and Parliament cigarettes and placed them in the stream of commerce.
3. From approximately 1942 through 1982 defendant Loew's Theatres Inc. individually and/or its predecessors, hereafter referred to as "LOEW'S THEATRES INC.," was in the business of manufacturing and selling True cigarettes and placed them in the stream of commerce.
4. From approximately 1942 through 1955 Rose D. Cipollone purchased and smoked Chesterfield cigarettes.
5. From approximately 1955 through 1968 Rose D. Cipollone purchased and smoked L & M cigarettes.
6. From approximately 1968 through 1972 Rose D. Cipollone purchased and smoked Virginia Slims cigarettes.
7. From approximately 1972 through 1974 Rose D. Cipollone purchased and smoked Parliament cigarettes.
8. From approximately 1974 through 1982 Rose D. Cipollone purchased and smoked True cigarettes.
9. The cigarettes manufactured and sold by defendants LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. presented a risk to the plaintiff's decedent far greater than any social utility.

10. The cigarettes manufactured and sold by the defendants LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. and purchased and used by Rose D. Cipollone, were in an unsafe and defective condition.

11. The cigarettes manufactured and sold by the defendants LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. were purchased by Rose D. Cipollone without substantial change in the condition in which they were manufactured and sold by said defendants.

12. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone, hereby demands damages against defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. individually, jointly and in the alternative, together with interest and costs of suit.

THIRD COUNT

1. Plaintiff, Antonio Cipollone repeats each and every allegation contained in the First and Second Counts of this Complaint as if set forth fully herein.

2. The cigarettes manufactured and sold by defendants LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. were defective as a result of said defendants' failure to provide adequate warnings of the health consequences of cigarette smoking.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. individually, jointly and in the alternative, together with interest and costs of suit.

FOURTH COUNT

1. Plaintiff, Antonio Cipollone repeats each and every allegation contained in the First, Second and Third Counts of this Complaint as if set forth fully herein.

2. During all times relevant hereto, defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. knew or should have known that the inhalation of cigarette smoke by the

plaintiff could result in cancer, heart disease and other adverse health consequences.

3. The defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. were negligent in the manner they tested, researched, sold, promoted and advertised the cigarettes which said defendants manufactured and sold.

4. The defendants LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. were negligent in failing to adequately warn of the health consequences of cigarette smoking.

5. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. together with interest and costs of suit.

FIFTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every allegation contained in the Counts of the Complaint as if set forth fully herein.

2. As a direct and proximate result of defendant LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s negligence in the manner in which they advertised their cigarette products, the warnings that were given regarding the adverse health effects of smoking were neutralized and rendered ineffective.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant, LIGGETT GROUP INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. together with interest and costs of suit.

SIXTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every allegation contained in the Counts of the Complaint as if set forth fully herein.

2. The defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. individually and as members of the tobacco industry, intentionally, wilfully and wantonly, through their advertising, attempted to neutralize the warnings that

were given regarding the adverse affects of cigarette smoking.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands punitive damages against defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. together with interest and costs of suit.

SEVENTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every count contained in all Counts of this Complaint as if set forth, fully herein.

2. Defendants LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. expressly warranted that smoking the cigarettes which they manufactured and sold did not present any significant health consequences.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s

defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES, INC. together with interest and costs of suit.

EIGHTH COUNT

1. Plaintiff, Antonio Cipollone repeats each and every allegation contained in all Counts of this Complaint as if set forth fully herein.

2. The defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. individually and as members of the tobacco industry were or should have been, at all times relevant hereto, in possession of medical and scientific data which indicated that the use of its cigarettes were hazardous to the health of consumers, but, prompted by pecuniary motives, the defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. individually and as members of the tobacco industry ignored and failed to act upon said medical and scientific data and conspired to deprive the public, and particularly the consumers of the defendants' products, of said medical and scientific data.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands punitive damages against defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, AND LOEW'S THEATRES INC. together with interest and costs of suit.

NINTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every allegation in all Counts of the Complaint as if set forth fully herein.

2. The cigarettes manufactured and sold by defendants LIGGETT GROUP INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. were defective as a result of the cigarettes causing addiction and dependency and therefore rendering any warning meaningless.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be

unable to attend to her usual occupation and activities, to expend monies for medical care to sustain other losses thereby, and which caused her death on October 21, 1984.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. together with interest and costs of suit.

TENTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every allegation contained in all Counts of the Complaint as if set forth fully herein.

2. LOEW'S THEATRES INC. is the successor in interest to Lorillard Corporation.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant LOEW'S THEATRES INC., together with interest and costs of suit.

ELEVENTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every allegation contained in all Counts of the Complaint as if set forth fully herein.

2. PHILIP MORRIS INCORPORATED is the successor in interest to Benson & Hedges.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant PHILIP MORRIS INCORPORATED, together with interest and costs of suit.

TWELFTH COUNT

1. Plaintiff Antonio Cipollone repeats each and every allegation contained in all Counts of the Complaint as if set forth fully herein.

2. LIGGETT GROUP INC. is the successor in interest to Liggett & Meyers Inc. and Liggett and Meyers Tobacco Co.

WHEREFORE, plaintiff, Antonio Cipollone hereby demands damages against defendant LIGGETT GROUP INC., together with interest and costs of suit.

THIRTEENTH COUNT

1. Plaintiff, Antonio Cipollone repeats each and every allegation contained in all Counts of this Complaint as if set forth fully herein.

2. Antonio Cipollone, at all times relevant hereto was the husband of Rose D. Cipollone.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

4. As a direct and proximate result of the negligence of the defendants LIGGETT GROUP INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES

INC., and the defective condition of defendant's products, as set forth in this Complaint, Rose D. Cipollone left surviving her as her heir Antonio Cipollone, who sustained pecuniary losses resulting from the death of Rose D. Cipollone, and incurred hospital, medical and funeral expenses for the deceased.

WHEREFORE, the plaintiff, Antonio Cipollone, hereby demands damages against the defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. together with interest and costs of suit.

FOURTEENTH COUNT

1. Plaintiff, Antonio Cipollone repeats each and every allegation contained in all Counts of this complaint as if set forth fully herein.

2. Antonio Cipollone, at all times relevant hereto was the husband of Rose D. Cipollone.

3. As a direct and proximate result of the use of defendants, LIGGETT GROUP, INC.'s, PHILIP MORRIS INCORPORATED's, and LOEW'S THEATRES INC.'s defective products, Rose D. Cipollone, developed bronchogenic carcinoma and other personal injuries, which caused her to endure great pain and suffering, to be unable to attend to her usual occupation and activities, to expend monies for medical care, to sustain other losses thereby, and which caused her death on October 21, 1984.

4. Antonio Cipollone witnessed the pain, agony and suffering of his wife, Rose D. Cipollone, through her

illness and treatment and up through the date of her death, and suffered personally thereby.

WHEREFORE, the plaintiff, Antonio Cipollone, hereby demands damages against the defendants, LIGGETT GROUP, INC., PHILIP MORRIS INCORPORATED, and LOEW'S THEATRES INC. together with interest and costs of suit.

Plaintiff hereby demands a trial by jury on all issues.

PORZIO, BROMBERG
& NEWMAN, P.C.
Attorneys for plaintiff,
Antonio Cipollone

By /s/ Marc Z. Edell
Marc Z. Edell
An Attorney of the Firm

Dated: 5/30/85

Appendix T

EXCERPTS OF TRAIL TESTIMONY

* * *

Harris-cross

[p. 1594] Q Now, Dr. Harris, let's go back to 1952.

In 1952 - excuse me, 1953, I believe you testified that an article appeared in the New England Journal of [p. 1595] Medicine.

Do you remember that?

A Yes.

Q And you testified about that during your direct testimony. And you referred to the fact that in 1953, this article in the New England Journal of Medicine, the editors stated that the situation affords unusual opportunities for the tobacco - vast tobacco industry to support impartial research into the effects that their products may have on human health, right?

A Right.

Q That is an editorial that appeared in 1953 in the New England Journal?

A That's correct.

Q The editors also made some other statements in this article about cigarette smoking and whether it causes lung cancer, did it not?

A That's correct.

Q Would you read to the jury, if you can see it? Can you see it from here?

A No.

Q I'll hold it up a little closer.

Harris-cross

Can you see it now?

A Yes.

Q Would you read the sentence that begins "It is true [p. 1596] that"?

A "It is true that the causative mechanism underlying the association between tobacco and lung cancer is not known, although there is ample room for speculation in the presence of known carcinogens in tobacco tar. Also, little is known about the dosage filtration [sic] of smoke and other factors that bear on the subject. However, if control of cholera had not been initiated empirically, but had awaited demonstration of the vibrio, which is the bacterium for cholera, active and useful preventive measures would have been delayed 50 years."

Q And then the editorial goes on to recommend that the tobacco industry do research?

A Impartial research into the effects that their products have on human health, may have on human health.

Q And isn't it a fact, Dr. Harris, that one year after this article appeared in the New England Journal of Medicine, certain members of the tobacco industry created an organization called the Tobacco Industry Research Committee?

A Yes, that's one of the publically funded research organizations that I talked about last week.

Q And the Tobacco Industry Research Committee was later called the Council for Tobacco Research?

A That's right, the CTR, which I mentioned in the letter from Dr. Spears to Mr. Judge.

Harris-cross

[p. 1597] Q Now, when you were testifying last week, Mr. Edell was questioning you, you made reference to a document that I think has been received in evidence as plaintiff's exhibit 4901, entitled "A Frank Statement to Smokers"?

A Yes.

Q Do you remember that?

A Yes, I do.

Q And you quoted certain language from that document.

Do you remember that?

A Mr. Edell directed my attention to one sentence and asked me my opinion concerning that sentence.

Q He didn't direct your attention to any of the other sentences in that document though, did he?

A No.

I do remember talking about the fact that this statement was precipitated, in my opinion, in large part by Wynder's finding concerning production of cancer in animals and although this statement, which appeared in the January 4th, 1954 New York Times, does not say the word "Wynder," it does make, if I recall correctly, make reference to the animal tests.

Q Now, would you answer the question I asked you, which is: That you only quoted the language that Mr. Edell asked you to quote from this document. Is that right?

Harris-cross

A I didn't quote anything, I just responded to his [p. 1598] question.

Q In fact, you know that this document, P-4901, is the document by which certain members of the tobacco industry announced the creation of the tobacco industry research committee. Isn't that right?

A That's correct. I don't know of any other document that specifically describes the creation of this TIRC.

Q But you didn't tell the jury that last week when you were testifying, did you?

A Yes, I did.

Q Did you tell the jury that in this document the members of the tobacco industry who issued this statement said, "Many people have asked us what we are going to do to meet the public concern aroused by the recent reports," you didn't tell the jury that, did you?

A I can't see it from here, but I would certainly want the jury to read the whole.

Q I'll ask you if you would read the paragraph that begins, "Many people have asked us what we are going to do," and the three things that the tobacco industry members said they were going to do.

A "Many people have asked us what we are doing to meet the public concern aroused by the recent reports. Here is the answer: One, we are pledging aid and assistance to the research effort into all phases of tobacco use and health. [p. 1599] This joint financial aid will, of course, be in addition [sic] what is already being contributed by individual companies.

Harris-cross

"Two, for this reason we are establishing a joint industry group consisting initially of the undersigned. This group will be known as the Tobacco Industry Research Committee.

"Three, in charge of the research activities of the company committee will be a scientist of unimpeachable integrity and national reputation. In addition, there will be an advisory board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science and education will be invited to serve on this board. These scientists will advise the committee on its research activities."

Q Now, this advertisement appeared in the New York Times on February - January 4, 1954, right?

A Right.

Q And, in fact, these individual members didn't create and form the Tobacco Industry Research Committee?

A Yes, they did.

Q Now, you referred to a statement that appeared in this document last week in which these individual companies said, "We believe the products we make are not injurious to health."

Do you remember that?

[p. 1600] A Yes, I do.

Q Do you remember what cigarette was being smoked by Mrs. Cipollone in 1954?

A Chesterfield.

Harris-cross

Q And Chesterfield is made by Liggett?

A That's correct.

Q And Liggett is not one of the companies that formed this committee or made this statement. Isn't that correct?

A No, they stayed out of that.

Q They were not members of the this organization. Isn't that right?

A That's right.

Q But it is their cigarette that Mrs. Cipollone was smoking in 1954?

A That's correct.

Q They were not smoking cigarettes manufactured either by Philip Morris or by Lorillard in 1954 when this statement was publically issued?

A No, Mrs. Cipollone was not smoking.

Q Mrs. Cipollone was not smoking products made by Philip Morris or Lorillard in 1954, when this statement was issued?

A No. She was smoking this one, Liggett & Myers.

Q Chesterfield.

Now, you know that, in fact, the Tobacco Industry Research Committee and the Council for Tobacco Research did [p. 1601] conduct smoking and health studies, did they not?

A Yes. Some studies were pertinent to smoking and health.

Harris-cross

Q Did I ask you that, whether they were pertinent?

A You asked me if there were smoking and health studies.

Q Did I ask you whether they were pertinent?

A Yes.

Q I did?

A Yes.

Q Which ones were pertinent and which ones weren't pertinent. Strike that.

Let me ask you first, how many studies has the Tobacco Industry Research Committee and its successor, Council for Tobacco Research, conducted or funded, sponsored since 1954?

A I don't know. I'm sure it's dozens of investigators.

Q Do you have any idea how many?

A If you were to include any study whatsoever, I'm sure it would be dozens, if not hundreds.

Q And how many of them have you read?

A I've read summaries of a great deal of them, but I have certainly not read all of them and I can't tell you how many.

Q Have you read anything other than summaries of any of the studies that have been funded by CTR and TCR [sic]?

A One of the sets of studies in the papers by Dr. [p. 1602] Homburger in which -

Harris-cross

Q Answer the question, Dr. Harris.

How many of them have you read in their entirety?

A I don't know.

Q One?

A Oh, no. A number of them.

Q How many, ten percent?

A When I read the papers, I don't always check to see who paid for the -

Q So the answer is, you don't know how many of them you read?

A I can just give you examples of papers I read within the last year that I believe were sponsored by this organization that is now called the CTR.

Q And to your knowledge, the Council for Tobacco Research continues, to this date, to fund research on smoking and health?

A Correct.

* * *

[p. 1895] Q Dr. Harris, you testified on your direct examination about TIRC, which later became CTR.

Do you remember that testimony?

A Yes, Tobacco Industry Research Committee, which in 1964 was called CTR, Council for Tobacco Research.

Q Mr. Edell had you read some of the language to the jury.

Harris-cross

Do you remember that?

A Yeah. There was a specific line. I can't read it now, but it would be on the lefthand side.

Q And then Mr. Bleakley yesterday had you read other portions of this document to the jury.

Do you remember that?

A Yes, I do.

[p. 1896] Q And I believe that is one, two and three, "Many people have asked us what we are doing to meet the public's concern aroused by the recent reports."

Here's the answer.

And then there are three things.

Do you remember that when Mr. Bleakley asked you to do that?

A Yes.

Q One of those, number three, says, "In charge of the research activities of the committee will be a scientist of unimpeachable integrity and national repute. In addition, there will be an advisory board of scientists, disinterested in the cigarette industry. A group of distinguished men from medicine, science and education will be invited to serve on this board. These scientists will advise the committee on its research activities."

Do you remember reading that to the jury yesterday?

A Yes, I do.

Q Dr. Harris, who is Clarence Cook Little?

Harris-cross

A Clarence Cook Little was a geneticist.

THE WITNESS: I'll have some water, too.

MR. PARRISH: Make that two.

THE WITNESS: May I continue?

I'll wait.

Q Please, go ahead.

[p. 1897] Clarence Cook Little was a geneticist. He first was president of, I think, the University of Michigan.

If we go back to the twenties when he was involved in the eugenics movement, in the 20's there was a movement where a number of social reformers got together with scientists and they were talking about reading a human race and everything like that.

I think some of the scientists thought it was carried away and dropped out of it, but he was originally from the eugenics movement. He was interested in genetics and heredity.

He then became interested as a biological scientist and developed a laboratory in Bar Harbor, Maine in which he was one of the people to inbred [sic] strains of animals like mice, so they would be genetically the same, because in the late 30's and early 40s, there was a new idea when we tested mice they should all be related to each other. Shouldn't be all different.

Then he stayed basically as a scientist doing research in that area in Bar Harbor up in Maine, until and continuing through his retirement, during which time - I missed something - in the 1940's he was also the executive

Harris-cross

director of the American Society of Cancer Control while he was also a laboratory scientist in Maine.

Q Doctor, the American Society for Cancer Control was that [p. 1898] what later became the American Cancer Society?

A Right.

Q And Dr. Little was president of that?

A There was a big breakup in '49 and Mary Lasiker basically got rid of everybody including Dr. Little and changed the name to the American Cancer Society.

Q And Dr. Little was someone who was known throughout the country as a highly-qualified scientist of the highest credentials; isn't that true?

A He was a well-regarded scientist, correct.

Q He was, in fact, the gentleman who became the head of the tobacco industry research committee, the scientist?

A Correct. He was in retirement at the time and came out of retirement to do that.

Q Paragraph one says, We are pledging aid and an assistance to the research efforts into all phases of tobacco use and health. This joint financial aid will, of course, be in addition to what is already being contributed by individual companies.

Do you remember reading that to the jury yesterday?

A Yes, I remember reading it, yes.

Q Can you see that okay, doctor?

Harris-cross

A Yes. Well, the reporter is in the way. I could step down.

Q Let me move it a little.

[p. 1899] Isn't it true that through 1986 almost 600 different scientists had been funded by grants from the Council by Tobacco Research?

A I wouldn't be able to verify the numbers independently.

Q Almost a thousand number of grants from the Council for Tobacco Research, with over 3,000 articles being published as a result of those grants, isn't that true?

A I wouldn't be able to check it independently. I don't know.

Q Isn't it also true, Dr. Harris that somewhere between 120 and 130 million dollars has been granted by TIRC and CTR over the years?

A I wouldn't be able to check it independently. I don't know.

Not right now I couldn't check it.

* * *

Homberger-cross

[p. 2730] Q Let me - I'm going to be asking you a number of questions. I have a bit of a cold and with the noise outside, if you have any difficulty hearing or understanding my questions, please let me know and either the reporter can read it back or I'll rephrase it.

First, I'd like to review with you your history with the Tobacco Industry Research Committee, which was

Homberger-cross

subsequently renamed Council for Tobacco Research. I'll refer it to as the Council for Tobacco Research, if that's all right?

A Sure.

Q Your first grant from the Council for Tobacco Research was in 1954 or 1955. Isn't that correct?

A That's approximately correct. Yes, I don't recall the exact date.

[p. 2731] Q You were one of the very early grantees. Isn't that correct?

A Oh, yes. I might even have been the first because I was a friend of Dr. Little.

Q At all times, until about 1969, you had grants from the Council for Tobacco Research. Isn't that correct?

A I think we had grants through 1973.

Q Grants that later became contracts. Isn't that true?

A At some point it was changed into a contract.

Q And you would submit grant proposals to the scientific advisory board and the Council for Tobacco Research would decide whether or not to fund them. Isn't that correct?

A Right, that's correct.

Q And the work you asked to have funded by the CTR was all significant and important research, wasn't it?

A I think so.

Homberger-cross

Q And the work you had funded by the Council for Tobacco Research all related to smoking and health. Isn't that correct?

A Indirectly, yes. It was all biological work on animals, smoking and responses of animals.

Q So it all related to smoking and health?

A Yes, yes.

Q And all the various grant proposals that you had presented and had funded by the CTR had scientific merit, [p. 2732] didn't they?

A I believe so.

Q And in your opinion, doctor, this is the type of work that an organization like the Council for Tobacco Research should have been doing. Isn't that correct?

MR. EDELL: Objection, your Honor, that calls for an expert opinion. I don't think he can turn this witness into an expert for him to testify with regard to the overall practices of the Council for Tobacco Research.

THE COURT: Sustained.

Q During this period of time, Doctor Clarence Cook Little was the scientific director of the CTR during the time you were getting your grant work. Isn't that correct?

A During most of the time, yes.

Q You had known him for a long time, you testified?

A Yes.

Homberger-cross

Q He had an excellent reputation in the scientific community, didn't he?

A Yes.

Q And his reputation was for both as an excellent scientist and a man of great integrity. Isn't that correct?

A Yes.

* * *

J.F. Cullman-cross

[p. 3434] Q Now, at the time that you became chief executive at Philip Morris in 1957, would you describe for the Court and jury the sort of atmosphere of publicity about smoking and health that was present?

A In '57?

Q '57?

A I would say it was already very bad. We had been through the Reader's Digest story. There was several stories in the Reader's Digest, Cancers by the Carton is one that comes to mind immediately. We already received the Doll and Hill statistical study from England. We received the Earle Wynder Graham Studies. We received a great range of studies, many of them sponsored by the Cancer Society, others by other organizations. So the question of smoking and health was already very much on our minds at that time.

MR. BLEAKLEY: Excuse me a moment, your Honor. Could I get a copy of the exhibit?

[p. 3435] MR. EDELL: Certainly. It's in the back room. I will get it.

J.F. Cullman-cross

A In furtherance to the question -

MR. BLEAKLEY: Wait till Mr. Edell comes back.

MR. EDELL: I will be right back.

There is a stand over there if you need it.

MR. BLEAKLEY: Thank you.

Q Mr. Cullman, do you want to complete -

A I want to say the statement we looked at yesterday, the ad came out in early January of 1954, which indicates even in the middle 50's and before I was actually with Philip Morris, the industry was considering taking major steps to try to mount research, get some answers, and do the best possible job we could in funding independent, impartial research, and that statement was really, it said, we were going to do it.

I mean the actual TIRC was - was not in effect till sometime in mid-1954.

MR. BLEAKLEY: Your Honor, this exhibit has been used a number of times but there is language that was not previously read to the jury which I would like to call to their attention.

THE COURT: You may.

MR. BLEAKLEY: I don't know whether you will be able to see it but I will read it: This is the Tobacco [p. 3436] Industry Research Committee, Plaintiff's Exhibit 4901, an ad in The New York Times, Monday January 4, 1954.

Many people have asked us what we are going to do - what we are doing to meet the public's concern aroused

J.F. Cullman-cross

by the recent reports. Here is the answer. One: We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will, of course, be in addition to what has already been contributed by individual companies.

Two: For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as the Tobacco Industry Research Committee.

Three: In charge of the research activities of the committee will be a scientist of unimblemishable integrity and national repute. There will be an advisory board of scientists disinterested in the cigarette industry.

A group of distinguished men from science and education will be invited to serve on this board. These scientists will advise the committee on its research committees. This statement is being issued because we believe the people know where we stand on it and what we intend to do about it.

Q Mr. Cullman, who was the first scientific director?

A I believe it was Clarence Cook Little.

[p. 3437] Q Who was that?

A He was - president of two universities, and I think it was Maine and Michigan, and he had been a member of the American Cancer Society Board. He was a highly regarded individual, unquestioned credentials just as we said in the ad.

* * *

Cohen-cross

[p. 5077] Q Now, you next testified about a category of information that you said was relevant in supporting your opinion concerning whether consumers and Rose Cipollone had an [p. 5078] adequate understanding of the nature and extent of the health consequences of smoking prior to 1966 and that was the information that you read that had been provided to you by Mr. Edell that came from the files of the defendants and the tobacco industry?

A I read boxes and boxes of documents, that's right.

Q That were provided to you by Mr. Edell in this case?

A Of course.

Q And you said in your testimony that statements by the tobacco companies that they were going to do research into smoking and health in 1954 was one of the things that affected your opinion, right?

A That's right, yes.

Q In 1954, when the tobacco industry announced the formation of the Tobacco Industry Research Committee, your testimony is that that is part of your support, part of the support for your opinion that Mrs. Cipollone did not have an adequate understanding?

A Well, I don't know that I was talking about Mrs. Cipollone when I made that statement. I think I was talking about the information environment.

Cohen-cross

And I think what I had said was that providing that information to consumers in full page or very large newspaper advertisement would reassure people that the tobacco industry was doing everything it possibly could to [p. 5079] investigate whether there might be a link between smoking and various health problems. And the article asserted that at this point they didn't believe there was such a link.

Q Now, accepting my representation to you that Dr. Harris testified in this case that it had not in 1954 been proven that cigarette smoking causes cancer, you're not suggesting there is anything wrong with the tobacco industry forming the Tobacco Industry Research Committee in 1954, are you?

A I wouldn't object to them forming the Tobacco Industry Research Committee ever.

Q At any point in time?

A At any point in time.

Q And conducting research?

A Absolutely not. I think it's a wonderful idea.

* * *

Schuman-cross

[p. 5898] Q Doctor, let's review the involvement of the tobacco companies and the tobacco industry with the Surgeon [p. 5899] General's Advisory Committee.

You talked about the fact that the Tobacco Institute, I believe you said, was in a position to suggest members of the committee?

A That's right.

Schuman-cross

Q And they were in a position to veto members, I think you told us?

A Correct.

Q Do you know whether or not they suggested anyone?

A I don't know that.

Q Do you know whether or not they vetoed anyone?

A I wouldn't know who they vetoed. It was just our understanding that out of the final batch, and I don't even know how many down to out of the 150 that had been named, who had been the category of veto and/or those who had begged off serving on the Committee.

Q So you really don't know -

A I don't know.

Q - whether they cast a veto, whether others cast a veto?

A That's right, I do not know.

Q Now, there is a section in the 1964 Surgeon General's Report labeled acknowledgements. Isn't that true?

MR. NORTHRIP: I believe it's page 17 in the jury binder that Mr. Edell provided.

THE COURT: Do you want the jury to turn to it?

[p. 5900] MR. NORTHRIP: Yes.

THE COURT: The jury may turn to page 17.

Schuman-cross

Q Doctor, I don't have my report with me, so I really can't tell you - perhaps I can. I believe that's Roman IV in the Surgeon General's advisory -

A That's correct. I have that page.

Q And the committee. - and that's the Surgeon General's Advisory Committee. I'm looking at the last sentence before the acknowledgements start.

The Committee did acknowledge with gratitude and deep appreciation the substantial cooperation and assistance of the following?

A Correct. I read that, sir.

Q And following that there are a number of names of individuals and organizations. Isn't that true?

A Correct.

Q And the list includes Lorilliard Company, P. Lorilliard I believe it's listed, a successor corporation, Philip Morris?

A Would you please?

Q Sure. The list includes a number of tobacco companies, does it not?

A It includes a number of what? I'm not catching that word, I'm sorry.

Q The list includes a company named P. Lorilliard, a predecessor of Lorilliard Company?

[p. 5901] A Under what heading? Is it alphabetical here? See the names of the individuals are alphabetic.

Schuman-cross

Q I believe the organizations had fitted in alphabetically as well?

A Okay.

Q That would be on page Roman 1523 in the jury binder.

A And it's X V, Roman 15 in my copy, here. Okay. P. Lorilliard Company, New York.

Q And it also includes Philip Morris on the same page?

A Correct.

Q And it includes Liggett & Myers?

A Correct, on the previous page.

Q And those are the defendants in this lawsuit. Are you aware of that?

A Yes, I'm aware of that.

Q And the list also includes the American Tobacco Company, Brown & Williamson Tobacco Corporation?

A Correct. American, I find.

What was the last one?

Q Brown & Williamson?

A Correct.

Q R. J. Reynolds Tobacco Company?

A Now, that would be under R. Yes, I see that, too.

Q Those are the major cigarette manufacturers. Isn't that correct?

Schuman-cross

[p. 5902] A I would guess so, yes.

Q And you don't know, doctor, what these particular companies did to cooperate with and assist the Surgeon General's Advisory Committee?

A No, that is correct, I don't know their specific activities.

Q And that was because contacts with the tobacco industry were handled by Dr. Peter Hamill?

A Correct.

Q And he was the medical coordinator of the committee. Isn't that correct?

A Correct.

Q And James Hundley, the Deputy Surgeon General under Dr. Terry?

A Correct.

Q Doctor, that list also includes Dr. Clarence Cook Little, does it not, the scientific director of the Tobacco Industry Research Committee?

A I note that also, yes.

Q And that organization was later renamed the Council for Tobacco Research?

A Right.

Q And includes doctor Robert C. Hockett, associate scientific director of the TIRC as well. Isn't that true?

A Dr. Robert who?

Schuman-cross

[p. 5903] Q Dr. Robert C. Hockett, associate scientific director of the Tobacco Industry Research -

A Hockett, yes, I see that.

Q Now, Dr. Schuman, you never met or dealt with Dr. Little or Dr. Hockett or any other representative of the TIRC?

A Yeah, I did not.

Q Dr. Peter Hamill, the medical coordinator of your committee, met with the TIRC representatives. Isn't that correct?

A I would say to the extent that they are mentioned in the minutes of our meetings. I recall that this was mentioned and Peter Hamill was responsible for those minutes at the time, the early deliberation of the company.

Q And Dr. Hamill is an epidemiologist like yourself. Isn't that correct?

A Correct.

Q And you consider him a solid citizen in your field?

A Yes, I have considered him such.

Q And do you still today?

A I do.

Q And Dr. Hamill was the person who initially contacted you on behalf of plaintiffs about participating in this lawsuit. Isn't that correct?

Schuman-cross

A That's correct.

Q And he met with you and with plaintiffs' counsel on one [p. 5904] of the occasions, at least, when you were preparing for your depositions?

A Yes, met with him at his home.

Q And you have had an opportunity to review Dr. Hamill's deposition taken in this case. Isn't that correct?

A I had his - I don't know how many deposition days he submitted, but I remember seeing two volumes, I presume they were the two days of his first deposition or the two days of his deposition, if he had not been followed after that.

Q You did get a chance to read the first two days?

A Yes, yes, I did.

Q And do you recall that he testified that the Tobacco Industry Research Committee cooperated fully with the Surgeon General's Advisory Committee in every area?

A I remember that.

Q And in your estimation, Dr. Schuman, Dr. Clarence Cook Little, the scientific director of the Tobacco Industry Research Committee was considered one of the true giants in biological science. Isn't that correct?

A That name was so offered to me over the years, yes.

Q And in Dr. Hamill's opinion and he expressed it in his deposition, Dr. Little was the soul of integrity. Isn't that true?

Schuman-cross

A It's his opinion. I would have nothing to judge that or base that on myself.

* * *

Deposition of Domenica Cilento

[p. 6309] Q Did you ever hear the term coffin?

A Oh, yes. Let me put another nail in my coffin or something like that.

Q When did you -

A Way back.

Q When you say "way back," how far back?

A Way back. I think I always heard it.

Q Since you first started smoking; isn't that fair to say?

A Oh, yeah.

MR. PARRISH: Your Honor, I have an objection to the question beginning on 57, line 20, continuing to 50, line 6.

THE COURT: I will sustain the objection.

MR. EDELL: Picking up Page 58, line 13.

Q Are you aware today of what Antonio Cipollone's attitude is about cigarette smoking?

A He doesn't like it.

Q When did you first became [sic] aware that Antonio did not like cigarette smoking?

A I think as long as I know him. He has an allergy or something.

Deposition of Domenica Cilento

Q You know him since prior to the time he married Rose?

[p. 6310] A Yes.

Q Did Rose ever discuss with you Antonio's feeling about her smoking?

A No.

Q Did she ever tell you that, he is always badgering me about not smoking?

A Yes. Because he always badgered everybody who smoked.

* * *

[p. 6355] Q Am I correct that your father passed away in 1940?

A 1940.

Q Could you tell me what the cause of his death was?

A Cerebral hemorrhage.

Q And he was a smoker. Is that right?

A Yes, sir.

Q Was there any discussion around the time of his death about the effect of the cigarette smoking on his health that you can recall?

A Oh, mama used to yell at him. We were young. Every time -

Q 1940 you were about eighteen years old. Is that right?

Deposition of Domenica Cilento

A Seventeen.

Q Seventeen. You were saying - sorry. Go ahead.

A Mama used to yell at him for smoking because every time he lit, he coughed.

Q Would you say he had a chronic cough?

A Yes. He had a chronic cough.

Q Do you recall your mother lecturing him to stop smoking because of his cough?

A Yes, yes.

Q Would it be fair to say at that time you associated your father's smoking with his cough?

A I don't know if I did.

[p. 6356] Q But you recall your mother making that association. Is that right?

A Yes.

Q Did your mother ever urge you not to smoke?

A Always.

Q And did she urge Mrs. Cipollone, by that I mean the plaintiff, Rose Cipollone, in this case not to smoke?

A Always. My mother never liked it.

Q She also urged your father prior to 1940 not to smoke or cut down. Is that right?

A Yes.

* * *

T. Cipollone-cross

[p. 6379] Q Mr. Cipollone, I believe you said that you lived with your mother and father until about July or August of 1982. Is that right?

A Yes.

Q That is when you moved to California?

A Yes.

Q And up till that time you continuously lived at home with your parents?

A (No response).

Q And you recall that during the time you were living at home, there were periods when your mother and father talked about cigarette smoking. Right?

A Yes.

Q And I think you told us at your deposition that many times your father told your mother that he didn't believe it was good for her to smoke?

A Yes.

Q Sometimes he would say bafuma, which I take it is Italian for cigarettes?

A I think that is what it means.

Q He told her it was no good for her and she shouldn't smoke?

A Yes.

[p. 6380] Q Right?

A Yes.

T. Cipollone-cross

Q And I think you also told us at your deposition that there were times when your mother would light a cigarette and your father would complain and say, You shouldn't smoke. Why are you going to kill yourself? Do you remember that?

A I think so.

Q And there were times when family members, your aunts and your uncles would come to the house for a card game?

A Yes.

Q Some of them were smokers?

A Yes.

Q When she would light up, your father would complain and say, Why are you going to smoke? You all are going to kill yourselves? Do you remember that?

A Yes.

Q And I believe you also told us at your deposition, Mr. Cipollone, to your knowledge your mother never tried to quit smoking?

A Yes.

Q Nobody told you that she ever tried to quit?

A No.

Q And you have no personal knowledge of your mother ever trying to put down on her smoking?

A No personal knowledge of it.

* * *
T. Cipollone-cross

[p. 6389] Q As I understand it, there came a time in 1975 that Dr. Lowy advised you to stop smoking?

A Yes.

Q And then you did stop smoking. Correct?

A Yes.

Q And you knew Dr. Lowy was treating your mother at approximately that same time, '73, '74, '75?

A Yes.

Q I believe you told us at the deposition that you told [p. 6390] your mother that Dr. Lowy had told you to stop smoking and that is why you were stopping smoking?

A That was part of the reason.

Q Your mother was the type of a person, I believe you told us on deposition, that took care of her health. She went for frequent medical examinations to take care of herself?

A Yes.

* * *
Deposition of Rose Cipollone

[p. 7051] Q Do you recall any message in Chesterfield ads other than cigarettes being mild?

A I don't remember.

Q And that is during the entire period of time you were smoking Chesterfield?

A I think it was just Chesterfield.

Deposition of Rose Cipollone

Q Sorry?

A Just Chesterfield.

Q You don't remember any other message?

A No, I don't remember.

* * *

[p. 7062] Q Then did he make other arguments as time went on?

A Yes, sir.

Q When did he make those other arguments?

A Constantly.

Q What would he say?

A Please stop smoking.

Q What reason did he give?

A Said it was bad for my health.

Q When did he start saying it was bath [sic] for your health?

A All along.

Q You mean all along starting in 1947?

A Sure.

Q Did he get my more specific as to why it was bad for your health?

A Oh, yes, sure.

Q What would he say?

Deposition of Rose Cipollone

A Well, when they started with some of the findings on T.V. he would note them and tell them to me about the Surgeon General and smoking was bad for your health and smoking caused heart disease and cancer, et cetera. He would always bring it to my attention.

Q But starting back even in 1947, did I understand your testimony to be that he was telling you smoking was bad for your health?

[p. 7063] A He didn't tell me that it caused cancer or heart disease, but he said it was not good for you, that was his expression.

Q When did he start telling you about the findings that he saw on T.V. that cigarette smoking might cause cancer or heart disease?

A I don't recall the date.

Q Would it have been as early as 1950?

A I don't recall.

Q You don't have any idea when he started telling you that it might cause cancer?

A No, sir.

Q As soon as reports started?

MR. PARRISH: You don't have to read it.

MR. EDELL: Sorry.

MR. PARRISH: That is our designation. You don't have to read it, on page 79.

MR. EDELL: Continuing onto page 80.

Deposition of Rose Cipollone

MR. PARRISH: Excuse me. I am sorry. Just give me a minute.

Sorry. We do want it read. 156.

Q As soon as reports started appearing on T.V. and on the radio that cigarette smoking being associated with heart disease and cancer did your husband start talking to you about them?

[p. 7064] A Yes, sir.

Q And he started urging you to quit because of that?

A Yes, sir.

Q When did you first try to quite [sic] smoking?

A When I became pregnant with my first child.

Q You never tried to quit before that date?

A No.

Q You never tried to cut down before that date?

A No.

Q When you tried to quit when you became pregnant with your first child why did you make that attempt?

A My husband begged me to. He said don't smoke while you are pregnant and I was very young, I was 21, I was going to be a mother and I was all excited and I thought oh, I'm going to be so good I will not smoke and endanger my child or myself and of course every once in a while, I would sneak a cigarette. It was very hard. I tried hard and I did well for that period.

Deposition of Rose Cipollone

Q For that period, how much would you judge you smoked?

A I couldn't really tell you because every now and then I would steal a cigarette from my sister. I would buy a pack and hide it. When my husband wasn't around I would take one. I didn't smoke too much but I didn't give it up altogether.

Q How many cigarettes would you judge you were smoking a [p. 7065] day during this period?

A I really couldn't tell you because if my husband was around I couldn't smoke at all.

Q How did you consider that you were endangering your child?

A I didn't consider it really. I just thought I was being so marvelous and so good.

Q I guess I would ask you again, if it would refresh your recollection, when you said before that you didn't want to endanger your child, can you tell me what you were talking about by the way of an endangerment to your child?

A Well, I went to a very old doctor. He was very elderly. He had delivered my brother and I think he had delivered my younger sister and I went to him. He was about 80 years old. He was still practicing. I think they had the discussion with my husband. My husband said, you know, doctor, she smokes.

Q Were you present?

A Yes, I was.

Deposition of Rose Cipollone

I was on the examining table and the doctor was there were [sic] my husband. And he was a very old doctor, and he said to my husband something to the effect that my husband said, oh, you know, she smokes and the doctor said oh, you don't want to smoke when you are pregnant, something like that, and then my husband would nudge me and nudge me and I [p. 7066] said I'll stop, all right. I was very young, 21. I thought wow, a miracle, I am going to have a baby. You try to be so proper and good.

Q What were you referring to when you said endanger yourself?

A I guess it was the same thing.

Q You were concerned that cigarettes would in some way harm you?

A You want to know the truth, I wasn't concerned. They were concerned. My husband hated it. I told you that at the beginning. He would try anything to make me stop.

Q Did your stopping cause you to be nervous or irritable?

A No. I would sneak a cigarette once in a while.

* * *

[p. 7079] Q How long did you smoke Chesterfield?

A I smoked Chesterfields I think until they came out with L&M, with a filter cigarette.

Q Can you tell us approximately when that would have been?

Deposition of Rose Cipollone

A I really don't recall the year. I know that I did switched [sic] to the filter cigarettes.

Q Why did you make that switch?

A Well, they were talking about the filter tip, that it was milder and a miracle it would keep the stuff inside a trap, whatever.

Q When you say "the stuff," what are you referring to?

A Nicotine, the brown stuff.

Q Why did you desire the filter tip?

A Because it was the new thing and I figured, well, go along.

Q Any other reason for switching to L&M?

A I figured it was better.

Q In what respect?

A The bad stuff would stay in the filter then.

Q Why did you consider that bad stuff?

A Because they used to advertise like that, they used to show that the tip, the filter, that nicotine and the tars would go through the filter.

Q Why were you concerned about the nicotine and tars?

[p. 7080] A I didn't think it was good.

Q You didn't think it was good?

A That's right.

Deposition of Rose Cipollone

Q Was it because of your concern about your health?

A Not really.

Q What was the concern?

A I don't know. It was the trend. Everybody was smoking the filter cigarettes and I changed, too.

* * *

[p. 7110] Q Did you ever make any other attempt to quit smoking?

A Yes, I did.

Q When would that have been?

A I believe that was in the middle '60s or so.

Q So from 1947 until the middle '60s, you never made any other attempt to quit smoking?

[p. 7111] A No, I didn't.

Q Did you ever try to cut down during that period of time?

A Sometimes, not successfully.

Q What would prompt you to try to cut down and when, if you can tell me?

A Well, Tony was always after me to stop smoking, he really was. Then there were articles about tests that they were doing with monkeys and that smoking was no good for the lungs and it caused diseases, heart disease, cancer, emphysema.

Deposition of Rose Cipollone

MR. SILFEN: Your Honor, next portion, same objection.

THE COURT: From where to where?

MR. SILFEN: Page 276, 13 through 277, three, more or less.

THE COURT: Let me read it, please.

Overruled. I'll permit it.

Q Can you be more specific?

A There were newspaper articles, there were TV articles, there were radio articles.

And, of course, I told you that Antonio always used to draw my attention if he saw something in the paper or heard something.

Of course, I didn't want to believe that because it was very hard to quit and I figured, how true can it be if [p. 7112] they strapped a monkey 24 hours to a machine? Of course he was going to get something. And I figured I'm not strapped to a machine and the Government was there and there was no real proof. Tobacco companies wouldn't do anything that was going to kill you, as I figured, so I figured until they proved it to me, until they proved it to me to be real, I didn't take it seriously. I'm being every honest with you. Maybe I didn't want to believe it.

Q When your husband would point these articles out to you, did you read them?

A I tell you, not in front of him I wouldn't. I wouldn't give him the satisfaction, but I did read them and I did listen. But when he was around he would draw

Deposition of Rose Cipollone

my attention and I would make excuses to leave the room or I'd say, yes, I don't want to hear that. And that's that.

Q What period of time are we talking about when you would see these kinds of articles?

A This is, I'll say, through the middle '60s and '70s and until I got the cancer.

Q Did you read articles prior to the middle '60s?

A I don't really recall. I don't recall.

Q If there were articles?

A If there were an article, Tony would have drawn my attention to it, believe me.

Q And you would have read them?

[p. 7113] A And I would have made believe I didn't read them.

Q And, in fact, would have?

A Of course.

Q Or if they had appeared in articles in magazines that you normally read?

A Sure, I would read them. I wouldn't tell him.

Q Could you tell me some of the magazines that you subscribed to that had articles of this type?

A There were articles in the a lot of magazines. I couldn't specify. There were so many magazines that came in and out of my house. There were magazines in the beauty parlor. All the magazines that I previously mentioned, some of them had articles. In fact, lots of

Deposition of Rose Cipollone

them had articles. As the years went by you saw more and more articles and more on TV and more tests and you saw more monkeys and whatever.

Q What motivated you? Was it these articles that motivated you to try to cut down on your smoking?

A I was coughing, I was starting to cough and I used to have a pain that was like on the rightside of my neck. I don't know if it came from my neck down or from here up, but I was coughing.

And I tell you the truth, I was making novinas I was so scared sometimes that I was getting sick and I used to make all kinds of promises to God if he didn't let me have cancer that I wouldn't do this and I wouldn't do that. [p. 7114] But I never kept the promise and that's terrible, but I'm confessing it here.

MR. EDELL: Beginning at line 570, 2 through 575, ten. We don't believe that it's appropriate for completeness, your Honor.

THE COURT: You're not reading it at some later date - later time?

MR. EDELL: That's correct.

THE COURT: Your position, Mr. Parrish.

MR. PARRISH: We'll read that part in our case.

THE COURT: All right. Thank you.

That is through?

MR. EDELL: Line ten on page 159.

THE COURT: Thank you.

Deposition of Rose Cipollone

Q You had a pain in your neck around that time?

THE READER: I am sorry. What line?

MR. EDELL: 159, line 11.

A In my throat.

Q In your throat?

A Yes.

Q You associated that with smoking; didn't you?

A I thought it was a little irritated, yes.

Q You got a little scared?

A Yes, very.

Q And went to church?

[p. 7115] A Yes.

Q You are a religious person you told us?

A Not too much.

Q But you went to church?

A Yes.

Q You said novenas, you said a series of novenas?

A One.

Q You told me, you said more than one. You said I was making novenas. Weren't you referring to more than one novena?

A A novena is a nine-day series so sometimes people call it a novena or novenas but it's nine days.

Deposition of Rose Cipollone

Q You went through the nine-day series?

A Yes.

Q Who did you make the novena to?

A St. Jude.

Q Why St. Jude?

A I like him.

Q You like St. Jude?

A Yes.

Q You said to St. Jude in church, you said he shouldn't let you have cancer. Did you say that to St. Jude in church?

A I prayed that I wouldn't have cancer.

Q You said you were scared and you had the coughing and [p. 7116] the pain in your throat?

A Right.

MR. EDELL: Your Honor, if the defendants want to read it now, let them read it, because it is too out of context in terms of trying to ask questions. I think the tenor of the questions -

THE COURT: You have no objection to it being read but you want them to read it?

MR. EDELL: Correct.

THE COURT: Mr. Parrish.

MR. PARRISH: Where would you like me to stop?

Deposition of Rose Cipollone

MR. EDELL: I believe line two.

MR. PARRISH: Stop.

MR. EDELL: Designation goes through 165.

(Counsel confer.)

MR. PARRISH: Question: And when you were talking to St. Jude it was a serious matter for you then, wasn't it?

A Well, I don't know if you know anything about my religion and maybe I will clarify a point or two. A saint can only intercede in your behalf. He can't do anything. He can intercede for you so you ask him to intercede in your behalf.

Q What was it that you wanted him to intercede for you about?

A That I wouldn't be sick.

[p. 7117] Q You wouldn't be sick with lung cancer, isn't that true?

A That I wouldn't be sick, yes.

Q You wanted St. Jude to intercede for you because you were afraid of getting lung cancer; true?

A Yes. I was.

Q And you knew you could die from lung cancer, true?

A Oh, yes.

Q And you knew at that time that it was the cigarette smoking that you were afraid of causing your lung cancer, isn't that true?

Deposition of Rose Cipollone

A Yes.

Q You weren't telling God or this saint to intercede for you with God anything that was false, were you?

A No. I don't think so.

Q You really believed at that time that you could get sick from cigarette smoking, didn't you?

A Let's say I was afraid of death, getting sick.

Q You were afraid of getting sick to the point where you went to a saint to intercede for you on your behalf?

A Right.

Q Isn't that true?

A Yes.

Q You were serious about the fact that you thought you could get sick from smoking?

A You are going to fool around with a saint? Of course [p. 7118] you are serious.

Q At that time you didn't tell the saint that you thought cigarettes were safe, did you?

A Did I tell the saint cigarettes were safe? Come on, now, give me a break, too. I was going to say to the saint that cigarettes are safe, St. Jude? Why would I go then?

Phrase the question in another way.

Q Do you mean to say that why would you go to St. Jude if you felt cigarettes were safe? Is that what you mean to say?

Deposition of Rose Cipollone

A I was going to say why would I go to St. Jude if I wasn't afraid?

Q You were afraid because you thought cigarettes were unsafe. Isn't that true, isn't that a fact?

A I was afraid because I had a pain in my throat, and I didn't want to get sick.

Q From cigarettes?

A From cigarettes.

Q It was not in the background of not knowing about cigarettes. You had read the Surgeon General's Report as it appeared in the newspaper. Isn't that true?

A Right.

Q You had been talked to by your husband for years. Isn't that true?

A Correct.

* * *

[p. 7121] Q Did you ever have occasion to hear the Surgeon General's Report on smoking?

A Oh, yes.

Q Did you hear about that approximately at the time the report was made public?

[p. 7122] A. Yes.

Q Did you ever have occasion to read that report?

A I believe I did and they had a big thing on T.V. about it.

Deposition of Rose Cipollone

Q How did you happen to read the report?

A My husband brought it to my attention.

Q Then you got it -

A The whole report?

Q Yes.

A No. I read the article in the paper about it.

Q Do you recall that the report, that that report talked about lung cancer?

A I do recall that it mentioned lung cancer and it mentioned heart disease and other things.

Q Did you believe what the Surgeon General said about lung cancer and heart disease?

A I don't know. I didn't want to believe it.

Q But did you?

A I don't know. I really don't know if I believed it or not.

Q But you did become afraid that you might get cancer?

A A little.

Q And you were saying novenas that you wouldn't get cancer?

A That is right.

[p. 7123] Q Do you also recall when a warning started to appear on cigarette packages?

Deposition of Rose Cipollone

A I don't really recall when it started to appear.

Q But you did see it?

A Yes, it was on the side of the package.

Q Do you remember the warning, "Caution: Cigarette Smoking May Be Hazardous To Your Health"?

A Yes.

Q Do you know what that meant?

A That smoking was dangerous.

Q You knew if you continued to smoke that you might get lung cancer, didn't you?

A I didn't believe it.

Q But you knew there was a possibility?

A I still wouldn't believe it.

Q Do you recall that a few years later the warning was changed to read, "Warning: The Surgeon General has determined that cigarette smoking is dangerous to your health"?

A I didn't recall. I didn't even notice that they changed it.

Q You didn't read the warning?

A Once it was on the package I didn't open the package and look at the warning and read it every time I smoked a pack of cigarettes. It was there.

[p. 7124] Q It was on the outside of the package?

A That is right.

Deposition of Rose Cipollone

Q So you knew it was there but you just didn't read it?

A Right.

Q Did your husband point the warning out to you?

A On the cigarette package?

MR. EDELL: When it changed? Is that what you are talking about, Mr. Northrip?

MR. NORTHRIP: At any time.

A My husband was always pointing out to me about cigarettes and the warnings.

Q You knew back when the Surgeon General's report and when the warning first went on the package that the Surgeon General believed that if you continued to smoke you might get lung cancer, didn't you?

A I don't know if I believed that.

Q You knew it was what the Surgeon General believed though, didn't you?

A I am sure that I didn't want to believe these warnings.

Q You didn't want to?

A Exactly.

* * *

[p. 7127] MR. EDELL: Question: To your knowledge has any tobacco company or any representative of cigarette manufacturers ever represented in any way that the warning [p. 7128] on cigarette packages which you have seen are inaccurate?

Deposition of Rose Cipollone

A I don't know.

Q Well, do you know of any occasion when such a representation has been made?

A Yes. I recall. There was a representative from the tobacco company on television and they stated - rather she stated that there was no proof.

Q Who was that, if you recall?

A I don't know her name. She was a woman that represented the tobacco companies.

Q She said there was no proof?

A Right. There was no proof that.

Q When would that have been?

A Not too long ago.

Q You say not too long ago. Does that mean within the last year?

A Yes, I would say within the last couple of months.

Q Is that the first time that anybody from the tobacco company or representative of the tobacco company has made any statement that would in any way indicate that the warning was inaccurate?

A No. I had read articles in some newspapers, some of the answers to those stories.

Q Can you tell me about those, please.

A I couldn't specify because I read a number - read a [p. 7129] number of articles where the Tobacco Institute or the tobacco company said there was no specific proof that it caused cancer.

Deposition of Rose Cipollone

Q When do you recall that you read those? I am not asking for you the day obviously, but a period of time.

A Well, I couldn't give you a date. I think this was in sixties and seventies, early eighties.

Q Do you recall any particular company making such a statement?

A No, I don't.

Q Okay. Do you recall anybody on behalf of the tobacco institute other than the lady you told us about saying anything contrary to the warning label that appeared on cigarette packages?

A Do you mean a specific person?

Q Yes.

A No. I don't recall a specific person. But I had read articles like I mentioned to you where there would be issues that were brought up about smoking being hazardous or being not healthy.

Q Causing lung cancer?

A And causing lung cancer, heart disease, bladder cancer, things like that, and I remember reading articles where the tobacco companies or the Institute of Tobacco Companies or something to that effect, refused these and said it had had [p. 7130] not been proven specifically. I read articles like this and I heard them on T.V. and on the radio.

Q What period of time?

Deposition of Rose Cipollone

A As I said, during the sixties, late sixties, early seventies, and up until just a few or couple of months ago.

Q And when the Surgeon General's Report first came out and you heard about it and you first saw the warnings on cigarette packages, did that in any way impact on your smoking?

A It didn't make an impact on my smoking but it did frighten me a little.

Q But you continued to smoke just as much as you had been?

A Well, I was sure that if there was anything that dangerous that the tobacco people wouldn't allow it and the government wouldn't let them do that.

Q Okay. Did you consider the possibility that the government might have put a warning on to allow you to make a free choice - make a choice?

A I never thought about it that way, no.

Q When the warning came out on the packages and when the Surgeon General's Report came out, you continued to smoke and didn't try to cut down or quit, is that right?

A I continued to smoke but I did change brands of cigarettes. I was smoking cigarettes that had filters, cigarettes that had recessed filters, cigarettes that were [p. 7131] advertised to be low in tar and nicotine.

Dr. Lowy suggested to me that I change my brand of cigarettes.

Deposition of Rose Cipollone

Q But the Surgeon General's Report came out in 1964. Is that correct?

A Right.

Q And you were smoking L&M cigarettes at that time. Is that correct?

A I was smoking.

Q And had been for several years?

A Yes.

Q You didn't make any the change in your brand of cigarettes until 1968. Is that correct?

A I guess so.

Q So for approximately four years or three or four years after you have heard the Surgeon General's Report and saw the warning on the packages, you didn't make any change in your smoking habit. Is that correct?

A No. I kept smoking.

Q And didn't change your brand?

A I might have tried other brands but I didn't specifically smoke any other particular brands other than what I told you about.

* * *

[p. 7132] Q Do you recall seeing the anti-smoking commercials on television?

A Yes.

Q Did your husband point those out to you?

Deposition of Rose Cipollone

A Definitely.

[p. 7133] Q Did you see doctors on those, do you recall any doctors on those?

A Doctors where? Did I go see a doctor?

Q No. Talking about when you saw the anti-smoking ads or commercials on television did they have doctors on them?

A I don't recall. I know they started to have T.V. commercials about it's your breath or it's your life, the Lung Association of America I think was starting to put these ads on T.V. That I recall.

Q Can you tell me any specific messages contained in those ads?

A It's a matter of life and breath. That was one of the sloans [sic] that they used. It's a matter of life and breath. Different things like that sort of thing.

I know my granddaughter came home to me one day when I lit a cigarette and she said, Grandma, smoking kills. Children were starting to get educated in school about smoking, so there was a bit about anti-smoking, yes.

* * *

[p. 7140] Q What they simply said was that it had not been proven that cigarette smoking caused disease. Isn't that correct?

A Precisely.

* * *

Deposition of Rose Cipollone

[p. 7143] Q But you never tried to cut down the number of cigarettes you were smoking?

A I believe that if I smoked milder cigarettes it would be okay.

Q What led you to believe if you smoked milder cigarettes that it would be okay?

A Well, because they were advertising there were cigarettes with lower tar and nicotine and filters.

* * *

[p. 7145] Q What did the warning in the ads mean to you?

A The warning on the side?

Q Yes, in the ads. There was a warning in the ads, you recall seeing?

A Yes, I recall seeing the ads with warnings on the side.

Q What did the warning on those ads mean to you?

A That the Surgeon General thought or said that smoking would be hazardous to your health. It was a warning.

Q You knew that, didn't you?

There is a statement by Mr. Northrip: She knew what that warning said. She knew that the warning was there and it said cigarette smoking could be dangerous.

Q Is that correct?

Deposition of Rose Cipollone

A Yes.

Q Did you think you were smoking a safe cigarette?

A Yes.

Q That there was no risk to you whatsoever?

A Well, I didn't think there was a risk and if I did, I didn't want to believe there was a risk. You got to remember, I was addicted. I smoked, I smoked a lot. I was smoking for years. You just don't stop smoking like that. It's very difficult.

Q Did you ever try other than 1947?

[p. 7146] A I don't think so. I think I just went on in my own little world there smoking.

Q So the only time you ever tried to quit or cut down you did it with success?

A I didn't say that.

Q 1947 you - didn't you testify that you were somewhat successful in cutting down at that time?

A Yes.

Q That was the only time you ever tried?

A Right.

Q Can you tell us why you didn't try to quit after that date?

A It was very difficult.

Q To make a try?

A I don't hear you.

Deposition of Rose Cipollone

Q To try is difficult?

A Of course it was difficult.

Q Did you ever try to seek any help from anyone in quitting smoking?

A No.

Q Did you hear about stop smoking clinics?

A Yes, I had heard about them.

MR. EDELL: I assume this should be.

Q Did you ever try one?

A No.

* * *

[p. 7147] Q What enjoyment did you get from smoking?

A I don't know how to answer that.

Q Did it relieve tension for you?

A I enjoyed it. I don't know if it relieved tension. It was pleasurable.

Q You mentioned at one time you didn't want to give your husband the satisfaction of reading articles he pointed out to you?

A Yes.

Q Why was that?

A Because he was so against my smoking. I would make believe that I didn't want to see the articles and

Deposition of Rose Cipollone

have him [p. 7148] point out to me that I should stop smoking.

Q Did you not want to give him the satisfaction of stopping smoking?

A It's not that it was a personal against him. It was just that I smoked and I didn't want anybody to tell me to stop smoking.

Q Because that was your business, whether you smoked or not. Is that right?

A Well, let's just say I enjoyed my smoking and I didn't want to give it up. I thought it hard to give it up.

Q And you didn't want to?

A All right, I didn't want to.

* * *

[p. 7161] Q Did he tell you why?

A Well, he said to me, you smoke and you might as well smoke these, and he took out of his coat pocket a package of True.

Q Did he say anything else to you about them?

A No. He said if you're going to smoke, smoke these.

Q Was that the only reason why you switched to True?

A Yes. And, of course, I figured why did he tell me to switch to True? I saw the ads, local [sic] tar, low nicotine and [p. 7162] I figured they were better.

Deposition of Rose Cipollone

Q Can you recall any advertising concerning True cigarettes?

A Yes. I saw it in magazines, newspapers. There was a clock once with a True in it and it had numbers on it, nothing much.

* * *

[p. 7206] Q But they didn't say their cigarettes were safe, did they, or that their cigarettes wouldn't harm you?

A Well, I saw ads that said doctors recommend that you smoke this.

Q What ads did you see that said that?

A They were ads when the filter cigarettes came out and I think it was in L&M ads the doctors recommend you smoke filter cigarettes. Is that what you mean? I just don't understand the essence of your question.

Q What I'm asking is: Did Liggett Group ever indicate to you in any way that cigarettes were safe or would not harm you?

A Let's put it this way.

They never said that they would. I don't know when you say the Liggett Group or you say this group, if they told me that they wouldn't harm me. I know that through advertising, I was led to assume that they were safe and they wouldn't harm me. Is that your answer?

Q Then I must ask you again, what ads, what ads led you to believe that cigarettes were safe and would not harm you?

Deposition of Rose Cipollone

A Well, the advertising, when they came out with low tar for instance, when they stressed the five percent.

* * *

A. Cipollone-cross

[p. 7303] Q I think you also testified in answer to a question by Mr. Edell that when the Surgeon General's report came out, you brought that to Mrs. Cipollone's attention?

A Yes, I did.

Q And you told her that you were worried about her getting cancer?

A I worry about because whatever I read in the paper against cigarette and I just show it to her.

Q All right.

And didn't you tell her about the time the Surgeon General's report came out that you were worried about her getting cancer?

A I never said that. I never say that. I say I was worried about - I just show it to her, whatever it says in the paper.

Q Okay.

MR. COHN: Page 150, Mr. Edell.

Q Starting at line nine there is a question: "In the '60s I think you said that you pointed out the Surgeon General's report to her?"

"ANSWER: Right.

"QUESTION: Did you tell her that you were worried about her getting cancer?

A. Cipolle-cross

"ANSWER: Of course."

A Well, once it came out, I told her.

[p. 7304] Q You told her?

A Yeah.

Q That's all.

And there was a time like that she would just walk away?

A Just walk away.

Q Now, do you recall there came a time when warnings were printed on the packages of cigarettes?

A Yes.

Q And you called that to the attention of your wife, didn't you?

A That's the reason of that.

Q And you told her, look, the warning is right on the package now, correct?

A Something like that.

Q And she just walked away?

A Right.

Q And you really asked your wife to stop smoking all the time you were married, didn't you?

A Every time that I see it in the paper.

* * *

A. Cipolle-cross

[p. 7318] Q You mentioned that you pointed out the Surgeon General's Report to Mrs. Cipollone. In fact, there were subsequent Surgeon General's reports coming out on a fairly regular basis during the late sixties and seventies, isn't that correct?

A Yes.

Q You would point them out any time there was publicity about them to Mrs. Cipollone?

A Yes. You have to think that I work long hours, and many times I didn't even read the newspaper. So how often did I point it out to her?

Q Would it be any time you saw an article?

A If I saw it, yes, but I don't read the paper every [p. 7319] night, every day. I had no time for that.

* * *

Carstensen-direct

[p. 7609] Did you make an attempt to identify based on your reading of those depositions, the newspapers that Mrs. Cipollone regularly read or subscribed to?

A Yes. There was information on what newspapers were in the Cipollone household.

Q What newspapers were there?

A Well, I think I already talked about it earlier. After they moved to Little Ferry they subscribed to the Bergen Record and Mr. Cipollone brought the New York Daily News and/or the Herald Tribune home regularly. I think the deposition said daily, so those three newspapers were in the home with great frequency, on a daily basis, certainly.

Carstensen-direct

Q Did you identify articles in those papers that related to cigarette smoking and health?

A Yes.

Q How did you do that?

A Well, those three papers. I had already done a great [p. 7610] deal of other research as well. So in the case of those papers, I said [sic] about simply finding whether there were clipping filings. Typically, newspapers retain clipping files of their newspapers, and I had photocopies, sets of the newspaper had put in clipping filings relating to smoking and health and went through those.

Q Did you read them all?

A Sure, absolutely.

Q Do you remember, let us say, with respect to the Bergen Record, how many you found from the period 1961 to 1965?

A Well, in the clipping file there was nothing for '60. That had apparently been lost. There were 155 articles from the Bergen County Record for those four years.

Q And have you included certain of those in the jury binders?

A Yes. I think it is 102 of the 155 are included in the jury binder.

Q What about the Herald Tribune? How many articles did you find in the Herald Tribune?

A The Herald Tribune, which covers a greater number of years, 364 of which 222 are in the jury binder.

Carstensen-direct

Q And what about The Daily News?

A Daily News were 169, again in the clipping file that the newspaper had itself maintained, and 109 of those are in the jury binder. So there were, I think it comes out to 688 [p. 7611] articles altogether in the three newspapers of which there are, what, about 330 in the jury binder.

Q Now, am I correct that you stopped your search of those newspapers in 1965?

A Yes. Basically.

Q And did you rely on those articles that you found in coming to your conclusions in this case?

A Yes.

Q Is that something that historians customarily do in performing their research?

A Oh, for this kind of research question, absolutely.

* * *

[p. 7628] Q These things that you've shown us, are they all the articles that you found about cigarette smoking and health, up to 1965?

A No. I forget the exact total number. I guess from '60 to '64, I guess about 47 articles in the Reader's Digest.

There were close to 700 in the newspapers and I didn't do an exhaustive real search flipping through. There may have been things that didn't make it into the clipping file.

* * *

Defrancesco-direct

[p. 7829] Q Now, Mr. Defrancesco, I believe your father passed away in 1940. Is that right?

A October 15, 1940.

Q Was he a smoker?

A Yes, he was.

Q How old was he when he passed away?

A Fifty.

Q And do you know the cause of his death?

A Cerebral hemorrhage.

Q Is that a stroke?

A Yes.

Q Did your father smoke a lot?

A Yes, he did.

Q After - without telling me what was said, after your father passed away, did your mother talk about your father's smoking?

A Yes.

Q Did she talk - did she tell stories to you about your father's smoking?

A Well, we always witnessed my father smoking and she always said that coughing caused his stroke.

Q Did your mother tell that story to all of the children in the family?

Defrancesco-direct

A All of us, yes.

Q Including Mrs. Cipollone?

[p. 7830] A Yes.

Q Did your mother tell you and Mrs. Cipollone a story about -

MS. WALTERS: Objection. He is leading the witness.

THE COURT: Sustained.

Q Restricting it for the moment, Mr. Defrancesco, to stories that your mother told to you and the other children in the family, did your mother tell any other stories about your father's smoking, especially with regard -

A I do recall one particular story that -

MS. WALTERS: I want to clarify he asked about the question to him and other children in the family. Don't think it's clear.

MR. PARRISH: I think that was very clear in the question.

THE COURT: I will permit it. Overruled.

A On one occasion when my father had gone to the doctor with my mother, and the doctor had said to him, I think you should stop smoking, because he was coughing very much, he discarded the cigarettes and by the time he got to the corner he went back into the store and bought a pack of cigarettes, so they always - she always related this story to us.

Defrancesco-direct

Q Were there other stories or comments that your mother [p. 7831] made about smoking to you and the - and your sisters?

A Well, she was not happy to see them smoke, and she always reminded them of their father who smoked a lot and was always coughing and always attributed his death to the stroke caused by smoking.

Q Did you hear these stories from your mother frequently?

A Yes.

* * *

Martin-direct

[p. 8226] Q Do you remember Dr. Cohen testifying about the public relations efforts of the tobacco industry?

A Yes.

Q Based on your expertise in consumer behavior, do you have an opinion concerning whether the public relations efforts of a - of the tobacco industry have a significant impact on the information environment?

A Yes.

Q What is your opinion?

A My opinion is that no, because there is again no empirical evidence, no data, no foundation for that kind of a conclusion.

Q Dr. Cohen testified specifically at Page 4772, that the industries public relations efforts are successful in getting stories into the newspapers, into the press, and these stories have punchy headlines. These are not dry,

Martin-direct

dull things. They are based on expertly-prepared public relations material.

Do you have an opinion whether public relations efforts, if they are done expertly have a significant impact on the information environment?

A Yes, sir.

Q What is that opinion?

[p. 8227] A My opinion is that public relations being a part of a marketing communications, the day you believe what was rendered in that opinion is the day you have made a great error and, quite frankly, also as the basis of my previous experience as a working newsman, that is not the way – not the way the press operates and to a large extent, an unfair indictment of the American press. They are not the handmaiden of any company and particularly the press that was cited in this case, for instance, the New York Times just doesn't run things because some company sent them to them.

It is my experience as a newsman and as a person who works in marketing and works with firms who do public relations.

Q Dr. Cohen testified concerning the formation of the Tobacco Industry Research Committee the predecessor of the Council for Tobacco Research?

A Yes.

Q And do you remember his testifying at page –

MR. EDELL: I object to the question. Mr. Bleakley says, do you remember that Dr. Cohen testified

Martin-direct

to the formation of the Tobacco Industry Research Committee.

What is that probative of? If he has a question to ask about the Tobacco Industry Research Committee he can ask it.

[p. 8228] THE COURT: Sustained to form.

Q Do you remember Dr. Cohen testifying at page 4677, that the announcement by the Tobacco Industry Research Committee – by the Tobacco Industry that it was – 4677 line 6, committing large sums of money to study the relationship between public health – between smoking and health – excuse me.

Do you remember his testifying to that?

A Yes.

Q In your opinion, does the dissemination of that kind of a press release, that is an industry is committing money to research in smoking and health have a significant impact on the information environment?

A No. And there is no empirical data to support it. There is no foundation for it.

* * *

Sommers-direct

[p. 8574] Q Dr. Sommers what is the Council for Tobacco Research?

A Council for Tobacco Research is a funding organization for bio medical research, especially where relevant to smoking and health.

Q And who supports the Council for Tobacco Research or provides funding?

Sommers-direct

A All major cigarette manufacturers with the exception of Liggett & Myers.

Q What is the Scientific Advisory Board?

A Scientific Advisory Board is a group of individuals either M.D.'s or Ph.D.'s in different disciplines [sic] who are willing to examine applications to write analysis or critiques of them.

They are willing to come to meetings, read their critiques or analysis, have general discussion and [p. 8575] participate in voting whether they should be approved or disapproved. Then, if they are approved, each one writes a ticket, rating that particular application from best rating, number one, to weakest number five. That is their basic duty as a board.

Q When did you first have your contact with the Scientific Advisory Board?

A The first time I was - it was in 1965, and I was invited to give a talk on my research on host factors and cancer to the Scientific Advisory Board.

Q And what happened after that, further contact with the Scientific Advisory Board?

A In the following year, 1966 I was invited to join the Scientific Advisory Board and I did so.

Q Why did you decide to join?

A Well, there were two reasons. I was very impressed with the individuals who made up the Scientific Advisory Board.

Sommers-direct

Should I tell about some of them or would that be enough of it?

Q Well, if you will turn to the jury notebook please, page two, you might briefly want to tell the jury a little bit about the people who were there at the time.

A Yes. Not listed there, but who is there the year before and I got to talk to was professor Edward Wilson he was a father figure in statistics and epidemiology in the Harvard [p. 8576] School of Public Health. I was very impressed.

Kenneth Lynch, first one in the printed list was a pathologist. He was - he has recently been honored for being the first one in America to point out there was a disease in the lung from asbestos using autopsy material in the United States. Later he was the first one to draw attention to the combination of asbestos and lung cancer.

He was also the first one to use dogs as an experimental model in producing lung diseases in this field.

Dr. Andervont was one of my heroes in medical school. He is a lifetime employee of the Government, United States Public Health Service, and his service was chemicals that cause cancer. All kinds of chemicals.

Dr. Richard Bing is a famous cardiologist. He has invented various techniques for diagnosing and treating patients. He has received many awards, medically from West German Government, named scientist of the year by the College of Cardiology four or five years ago, and most unusual, there is a Richard Bing Fellowship, fellow trainees, colleagues and friends put up money. So every

Sommers-direct

year there is a Richard Bing fellow who gets a salary from that.

McKeen Cattell was the chairman of pharmacology of Cornell, had his own journal, had broad and deep knowledge of drugs, of medication.

[p. 8577] Leon Jacobson, an internist and hemotologist also interested in radiation damage, was for a long time the dean of the University of Chicago Medical School, now called Pritsker's School. He built it up were [sic] personnel and funds.

Member of the National Academy of Science. The highest level you are invited to. Not just medicine [sic] but various kinds of other science besides. And I forget if I mentioned it, he was on the cancer psychiatry committee at one time.

Dr. Clarence Cook Little, he was the president of the University of Maine and another time president of the University of Michigan. He was the director of the organization that later became the American Cancer Society. He is most famous for organizing the mouse colony in Bar Harbor, Maine, where all the inbred mice now spread all over the world were originated, and it is still going on and called the greatest advance in cancer research in the 20th Century. I think it is, except in the last ten years, now we have something equally or more important, but anyhow is the first scientific director of the Council.

Then Stanley Reimann, pathologist from Philadelphia, very interested in the development of cancer and different tissues and interested in German pathology,

Sommers-direct

belonged to the German pathology society and visited every year, academic pathologist of importance.

[p. 8578] Then Dr. Rienhoff a pioneer from John Hopkins of thoracic surgery.

Q Dr. Sommers, based on your experiences with the Scientific Advisory Board, why do the members decide to serve?

MR. EDELL: Your Honor, I will object. He can certainly go into why he has decided to serve.

THE COURT: Sustained.

Q Why did you decide to serve?

A I already mentioned how impressed I was with the people.

Secondly, I think if you are in research and do research and have published in research, you have a sort of a duty to help younger people get started in research and to help establish scientists who may have a hard time getting money because their field might not be popular to continue their research.

And the other thing about it - well, two other things, other thing about it is you see the most-challenging diseases right now and for the past 40 years or so, are the chronic diseases of older people, they have sometimes been grouped as degenerative diseases including cancer under this definition and it is thought now they have multiple factors and I am interested in trying to find out more about any, some, or if possible, all of these diseases,

Sommers-direct

and then finally when you go to an advisory board meeting, you hear [p. 8579] the latest science discussed across the table.

This fellow's work was already done in California. It's follow-up research, that sort of thing, we will not support it, when you get a full review of all the medical areas.

Q You mentioned the review of the grants as one of the purposes of the Scientific Advisory Board. I would like to show you what is marked Defendants' Exhibit 3008, and ask you -

MS. WALTERS: Can we see it?

MR. SIRRIDGE: Yes.

Q If you can come down and explain to the jury with the aid of the exhibit how applications are reviewed by the Scientific Advisory Board. First, let me ask you:

How does a researcher find out about the Council for Tobacco Research in order to apply?

A If he read the scientific literature he will run across an article that gives credits for support. This work was partly supported by this, that and the other organization, among them are the Council for Tobacco Research. May never have heard of it, look us up in the book of organizations that support research, write us a letter, give us a phone call.

Secondly, his colleague who just got money will tell them him that the council allows funding in your field [p. 8580] perhaps.

Sommers-direct

Q How many grant applications are there each year on an average?

A Varies, but it has gone up and up to over 300 a year. So however he hears about it, word of mouth, reading literature, there is an annual report of which he may or may not have seen. He contacted us, and is -

Q I think I fouled up here and got wrong one up front.

A All right.

Q Let me do a quick change here and put this one up.

A All right.

Q That is it I, think.

This is 3,010. Let me put this one up here, without hitting you in the neck -

A Or anyone else.

Q - and ask you to kind of describe briefly the process that happens at the Council when an application is received?

A All right.

MR. EDELL: We can see.

Q Okay.

A The researcher sends in an application. The application is very much like to other funding agencies such as the National Institute of Health. Format is very similar to applications say to the American Cancer Society. It is in detail.

[p. 8581] When the application reaches the office of the Council for Tobacco Research, members of the staff, two of them, assign sub committees of Scientific Advisory Board. If it's a cardiovascular application, no doubt Dr. Bing will be on it, and one or two other members of the Scientific Advisory Board.

If it is the kind of application nobody on the board is competent to discuss, then outside reviewers will be requested in writing or telephone, would they be willing if they receive the advertisements, to write a critique and get it in by the next meeting. And so then six telephone type size books like this, now a days, go out to each member of the board about a month before the semi-annual meeting. All the members of the board are supposed to be familiar with all of those applications, whether or not they're on the subcommittee.

So, then the meeting takes place and the chairman first takes care of some administrative details, which have to be approved by the board and then he goes on and calls the first application by the last name of the principle investigator and asks one or another member of the subcommittee to read his critique. That is done.

Then the other critiques are read, including those, if any, from outside reviewers and there is general discussion around the table.

[p. 8582] Then the chairman of the board calls for a motion to approve or disapprove. Now, if the motion is disapproved, that's the end of the opportunity by that person to get any money. They will receive a letter which says, we regret we can't fund your project and so and so

and, but if you wish to submit another project, we would be pleased to consider it at any time.

If the motion to approve carries, then as I think I mentioned already, each member of the board writes out a ticket with the number of the grant, the person's name and a check mark or number one, merit and that's also the relevance to smoking and health to five, the weakest.

Those are collected and averaged but nobody knows what the average is of any of them until after the meeting.

Q What happens after the Scientific Advisory Board rates the approved projects?

A Well, after the meeting ends, it's been a three day semi-annual meeting for some years, then usually as soon as possible, the next week, the scientific director, the research director, the four members of the scientific staff who are full-time scientists in the office, and usually the president, because he keeps score as to the average ratings, meet and now a days they look at a computer printout of how everybody rated, who is approved.

The top rating is 1.0 like A plus, absolute best. [p. 8583] Then it goes down to maybe 3.5.

Then the scientific director, it's his responsibility to decide who gets the money and he has to follow the advice of the Scientific Advisory Board on the 1.0s and all the way down through the ones and usually halfway through the 2.1s, 2.2s, 2.4s.

Now, since it's a semi-annual meeting, we feel we should only spend half the budget at each of the meetings. So at some point the administrator will say, well,

Sommers-direct

now you spent \$3 million and we only got -- really if you want to save something for the next meeting, you better not have very many more. So then at that point the scientific director is allowed a little discretion. If somebody is 2.6 and somebody else is 2.7, that's not a statistical difference anyway. And if we feel we haven't had as many cardiovascular projects as we hoped, we want to help build up cardiovascular research, the director is permitted to move that slightly lower rating up and to fund that one and not to fund the one above, which might be on bio-chemistry of some kind of vitamin substance.

Q Let me ask you, doctor, when there is a decision to award a grant, who does it go to?

A An individual never gets the money. It always goes to the institution.

Q Can you give the jury an idea of the kind of [p. 8584] institutions, organizations that grant belongs to?

A There are very many medical schools and universities and hospitals. Then there are free-standing, non-profit research groups like Scripps Research Institute in La Jolla and there are some community hospitals.

And then a grant may be given to a commercial research organization in biomedical science, like Illinois Institute of Technology, for example.

Q Dr. Sommers, can a scientific advisory board member make a grant application to the council?

A Yes.

Q What happens when a scientific advisory board member does so?

Sommers-direct

A Well, naturally that person isn't allowed to participate in the discussion or decision. He's out of the room.

Besides that, there must be two outside reviewers to give critiques. Besides that, there is a ground rule that all the members of the Scientific Advisory Board together cannot receive more than 15, one five, percent of the budget. And as one looks back, it's rarely been above five percent.

Q Dr. Sommers, have you ever applied for a grant?

A Yes. I believe three times.

Q And was that grant awarded to you or an institution?

A No. It was awarded to Delfield Hospital in the first [p. 8585] instance and to Lenox Hill Hospital where I was working in the latter two.

Q In your experience on the board, Dr. Sommers, has a Scientific Advisory Board member ever applied for a grant and been turned down?

A Oh, yes. Without naming individuals, one individual has had many more turned down than accepted and another individual, who's a very important scientist, I certainly remember once he was turned down, so, yes.

MR. EDELL: Just so we're clear, we're talking about prior to 1981?

MR. SIRRIDGE: Yes.

Q As long as we're standing here, Dr. Sommers, let me put the first one back up and have you describe for

Sommers-direct

the jury what happens after a grant has been awarded to an institution. If you could briefly tell the jury how the process works.

A Well, let's be clear that the money is given to the institution for the benefit of the work of the team or the individual who has got the grant. They just don't mingle it with all the other institution funds, we hope.

So the research begins. Ordinarily, it begins either July 1 or January 1. That's not inevitable. So when the grant is funded, then there is a check, because it turns out about 80 percent of the grantees have other support. [p. 8586] You can't keep a lab going just with the funds from one organization. You've got technicians, you've got post-doctoral fellows, you've got animals you have to pay so much a day for their care and so on. As I say, four out of five have support from other sources, like the National Institute of Health and individual granting agencies, cancer, heart, lung, so on.

You see, otherwise you'd be hand to mouth and if anything went wrong, you would be out of business. And once a team's broken up, it's awfully hard to ever reform a research team.

So, we check to see if their same or similar application went into another organization that might have a lot more money, like the National Cancer Institute has a billion dollars a year and then the applicant or the grantee, he's a grantee now, is given a choice; which one do you want to take, ours or theirs but you can't double dip, naturally.

Sommers-direct

So we understand it either hasn't been acted on or he didn't get the money from whatever source, if there was a competing application and there may not have been any. This may be the only outfit he's asking for money. Then one of the staff or the research director or the scientific director becomes the monitor for that individual. That means he's supposed to be available on the telephone, answer [p. 8587] letters, help the investigator in any way.

Every year, 18 months, every grantee is supposed to be visited in his or her laboratory by the monitor who may take along another staff person, member of the Scientific Advisory Board or some outside scientist and the idea is to see several things.

One, any way we can help you. Do you need more equipment or money? Secondly, how are you doing? Usually there are presentations by some of the junior members of the team. Then from the viewpoint of the council, is the money being well spent? And, number four, what's your progress? You're going to write it up. It's required to write a progress report but in between, how are you getting along? What have you discovered? A grant is literally a gift and, therefore, if the researcher decides he's got something better to do, a better experiment, he or she is allowed to do it, they don't have to use the money for the grant that was approved and funded.

All right. So there we go about visiting the researcher. And the reviews are usually written up by the monitor he visited, Dr. So-and-so and here's what's going on. Those are provided to the other staff members, scientific and research director.

Sommers-direct

Then there is an annual report which lists all the activity grants with abstracts of what they're doing and [p. 8588] those have to be approved by the authors.

So that's the bottom line in the center. What of course is hoped is that the investigator who receives the money will spend it wisely, will discover something and when he does, he'll report it at a medical meeting or with a poster and then he'll publish it.

Q Doctor, have grantees from the Council of Tobacco Research ever won any awards?

A Oh, yes. There are quite a few. The Lasker Award, Mary Lasker of New York, at least two. Then recently one of our younger grantees became a Markey fellow, that's said to be very competitive, and two of our grantees have received the Nobel Prize in medicine.

Q Dr. Sommers, do - I'm not sure I understood what you were saying. Would some of the research grantees receive funding from other organizations at the same time?

A Yes, nowadays in the last few years more often the case. And it's an exception if the individual or grant is funded only by the council.

Q Let me ask you, Dr. Sommers, I didn't ask you at the time but the do the advisory board members, do they serve on other review boards for scientific research?

A Oh, almost all of them either are on or have served on other boards and review applications for funding from other sources, yes. I mentioned the president of the Cancer [p. 8589] Advisory Board is just one example.

Sommers-direct

Q Do you know whether this process that we discussed, the grant approval process, how that compares to other organizations?

A Well, it's very similar to the organizations that - at least I have served, Breast Cancer Task Force and so on. It's the nature of the process of trying to choose the best investigators and the best institutions who it's hope will do the best research.

MR. SIRRIDGE: This is a little bit late. We're having time problems here on this one, your Honor.

Q We can pick this up later.

Dr. Sommers, why don't you resume your seat?

A Yes.

Q Dr. Sommers, could you give the jury an idea of the areas of the research that are funded through the council?

A Yes. Let me see now. I don't know if I'm under some time constraint. Can I tell how long it's been since it started? Am I allowed to tell that?

Q The time constraint is basically before 1982, so -

A I can't tell how old it is now. Is that the idea?

Q I'm not sure what the idea is, but give the jury an idea the types of areas that have been supported during your time on the board.

A Over the total time and expenditure of money which, let [p. 8590] us say, in 1981, '82, was around \$100 million. The majority has gone into cancer research. And

Sommers-direct

if you take the whole period, it's certainly over 55 or 60 percent.

Now, in the years 1981, when I became the scientific director and '82, then the next biggest funding, in terms of dollars, was about equal for chronic pulmonary disease and that's bronchitis, emphysema and for cardiovascular disease and arteriosclerosis.

Then beyond that, the next highest total amount was spent on pharmacology and that's largely nicotine pharmacology and it's a field that's really tremendously expanded and revolutionized beginning about ten, 15 years ago.

Then the next funding, in dollar amounts, is an immunology because, you see - well, it involves so many diseases, but with respect to cancer it's believed as people get cancer their immune defense isn't as strong and that's one of the reasons cancer grows.

This is not the only kind of immunology research. There is a lot of very basic research going on in the molecularly constitution variability, specificity, so on, of immune reactions.

Then beyond that, we have something new which the board has become very interested in since about 1970 and it's called molecular biology. That deals with things like [p. 8591] DNA and cell membranes and organelles and cells. And it's the kind of cutting edge of fairly far out research, which some day can't help but be relevant to some human diseases.

Sommers-direct

Then finally epidemiology. Years ago quite a bit of money was spent on epidemiology. More recently less money.

And those are the fields that make up the research activities that the council has funded, experiments.

* * *

Spears-direct

[p. 10143] Q. Dr. Spears, has Lorillard participated with other [p. 10144] cigarette manufacturers in funding research on cigarette smoking and health through CTR?

A. Yes, Lorillard has supported CTR.

Q. And that was going on when you came on in 1979?

A. That's correct.

Q. Would you tell us the type of research that Lorillard was funding through the Council For Tobacco Research when you came and during the period of time up to 1966?

A. Yes. The type of research that we were funding was related to diseases that had been statistically associated with tobacco smoking, and I'm not sure at the time - I guess all of the current diseases were then statistically associated to some degree prior to '66.

Q. What was the purpose of Lorillard's funding research through the Council For Tobacco Research?

A. Well, it was an efficient, more efficient way of funding research into the general area of causation than it was to conduct research individually, as individual companies. So that would be one of my purposes for funding

Spears-direct

it through such an organization as opposed to through an individual.

It also provided or allowed for many independent investigators to work with no interference from the industry.

Q. When you say it allowed for investigators to work without any interference from the industry, would you describe how the funding worked so there would be no interference from the [p. 10145] industry?

A. Yes. The industry provided monies for a research budget, and that research activity was administered through the CTR organization. But the actual determination as to what research was done was in the hands of a Scientific Advisory Board, a group of independent scientists who determined what actual research would be done.

Now, in fact, they reviewed applications for funds from individual investigators who came in to them relative to the overall mission of CTR and decided which ones would be funded.

Q. Did the CTR have a board of directors?

A. Yes, the CTR had a board of directors. That board was made up of the representatives of the member companies.

Q. And what role did that board of directors play?

A. Well, it played no role in determining what research would be done. It played a modest role in the administration - that is, such things as the salary of the

Spears-direct

staff, the approval of recommendations made by the president, benefits, administrative costs, offices, that sort of thing, and approved the research budget generally as it was proposed by the research director.

Q. Was the Council For Tobacco Research and the tobacco industry concerned with public relations during the period of time from 1959 to 1966?

A. Certainly they were concerned with public relations. I [p. 10146] think any industry would be concerned with how the public views them, and also how their customers view them.

Q. Was the CTR work published?

A. Yes. All of the CTR work that the investigators wrote and submitted as publications, those that were accepted by the journals were published, yes.

Q. Was there a scientific director?

A. Yes, there was a scientific director.

Q. And who was that during the time period 1959 to 1966?

A. Well, I think it would have been Clarence Cook Little through that period.

Q. And who was Clarence Cook Little?

A. He was a person who had attained a scientific reputation in the area of animal genetics at the Jackson Laboratory. He was a renowned authority in that field.

Q. What would be the relevance of animal genetics to work related to smoking and health?

Spears-direct

A. Well, as I explained a few minutes ago, the only animals that one could produce tumors in significant numbers on the skin of mice were selected genetically, reasonably genetically uniform animals; that is, it is possible to breed animals for experimental work which are highly susceptible to various insults that one might provide to the animal, or they might be very susceptible to a given disease. These then make them much more useful as laboratory models in producing a response in [p. 10147] that, obviously, if you can't get a response in the animal's system, you do not have a bioassay.

The Jackson Laboratory was a pillar in that regard in that prior to its establishment, the information and availability of laboratory animals that were genetically uniform was very sparse and was leading to a lot of confusion in terms of bioassay results.

So that the formation of that laboratory and Dr. Little was very instrumental in ultimately providing animals that were very useful in laboratory research.

Q. Again limiting the question to the time period we've been talking about, 1959 to 1966, what was the role of the scientific director of the CTR in relationship to the Scientific Advisory Board?

A. Well, he was a member of the Scientific Advisory Board, and his role was to interact with the investigators; that is, he would see that the grants were awarded according to the wishes of the Scientific Advisory Board, and carry out basically their instruction in that regard.

Spears-direct

Q. How did the Scientific Advisory Board go about distributing the funds provided to the CTR for the tobacco industry?

MR. EDELL: Your Honor, I didn't object to background information. Unless there's been some showing that this witness participated in that proceeding from a factual perspective, I [p. 10148] don't know how he's qualified to testify.

Q. Do you have actual knowledge, Dr. Spears, of how the Scientific Advisory Board functioned?

A. Yes, I do, and I participated in that proceeding at one time.

MR. EDELL: During that time frame?

THE WITNESS: No.

MR. EDELL: Well, I think that's the issue.

THE COURT: Sustained.

Q. Dr. Spears -

THE COURT: There's already been evidence on this, has there not, Mr. Northrip, as to how it operated?

MR. NORTHROP: There may be, Your Honor. I'll move on.

Q. Dr. Spears, do you know how the Council For Tobacco Research received research proposals?

A. Yes.

Q. And -

Spears-direct

MR. EDELL: Your Honor, I don't want to keep jumping up, but I think this whole area, unless he has firsthand knowledge -

MR. NORTHRIP: Your Honor, I've limited the area. I believe this is relevant and it's appropriate.

THE COURT: Well, it's a question of time, if he was there at this time. We're talking about the pre-'66 period.

[p. 10149] MR. NORTHRIP: Well, I think he has knowledge of how it was done at that time, Your Honor. He was in charge of R&D.

THE COURT: Well, ask him if he knows, if he has knowledge as to how it happened and what's the basis for that knowledge.

MR. NORTHRIP: All right.

Q. Dr. Spears, do you know as to how the Scientific Advisory Board got proposals in the pre-1966 era?

A. Yes, I do.

Q. And how did you come by that knowledge?

A. I knew that from meetings with individuals at the CTR, and I also know it from their publications, and those are the reasons.

Q. Was the Council For Tobacco Research at that time funding primarily grant or contract work?

A. It was essentially a hundred percent grant work.

Q. And would you describe what the grant work means?

Spears-direct

A. Yes. A grant means that an organization has a sum of money to award for research in given areas. Investigators, independent investigators are encouraged to apply for the funds to do work in these areas, and the investigator describes a project that he might wish to do or she might wish to do, including a general outline, background, why it's important work, and so forth.

That would be the grant proposal or request from the [p. 10150] investigator.

Q. How does grant research differ from contract research?

A. In contract research, the work is basically conceived by the contracting organization. A proposal is written or protocol is written which describes the work in detail as it will be done, and a contract is let. It frequently may be bid by a number of parties who are interested in doing the work, but once the contract is awarded, the investigator performs the research as spelled out in the protocol.

Q. Is there a difference in freedom to publish results?

A. Somewhat, yes, in that the organization that awards the contract actually owns the information and controls the information, and frequently, the contract will indicate that that is the case, and that the contractor will frequently at least review the information before it's published.

Q. Could you tell us how many researchers and institutions have been supported by CTR funding prior to 1966?

Spears-direct

A. Yes. There have been about I think 100 institutions, 280 investigators, and about 465 publications have resulted from that work at the end of 1966.

Q. Do you know if the individual scientists who applied for the grants got the funds?

A. No. The monies go to the institutions, and the institutions which the investigator is working, such as the university, administers the funds along the line items that are [p. 10151] set forth in the grant request.

Q. And did the Council For Tobacco Research during the time period 1959 to 1966 make available to the general public reports describing the research of funds?

A. Yes. There is an annual report which is issued annually. It contains abstracts of the projects and lists all of the active projects that are ongoing. Those reports are distributed to all of the major libraries and interested parties on the mailing lists.

Q. How about, does CTR take any affirmative steps to see that the reports area available to the medical and scientific community?

A. Yes, they actually mail them to many such organizations, as I said, the libraries and societies.

Q. And, Dr. Spears, limiting your answer to the time period 1959 to 1966, was the research being funded by the Council For Tobacco Research quality research?

A. Yes, in my opinion, it was, very definitely.

Q. Was it related to smoking and health?

A. Yes, it was.

* * *

Spears-cross

[p. 10184] Q Question of DDD, Doctor, the insecticide?

A Correct.

Q Known to cause cancer in humans?

A No.

[p. 10185] Q Known to cause cancer in animals?

A Yes.

Q And you asked Dr. Homburger to perform certain research with regard to DDD. Is that correct?

A Why don't I explain it?

Q Sorry.

A May I explain it?

Q Let me ask the questions and you can tell me whether or not if Dr. Homburger did research involved [sic] DDD for Lorillard.

A We did not ask him to do research. We asked Homburger to test certain fractions and materials isolated from tobacco smoke.

Q Lorillard identified DDD is in tobacco smoke?

A Yes, correct.

Q And you sent the smoke condensate off the fraction - sorry, containing DDD to Dr. Homburger and asked Dr. Homburger to see whether or not it produced cancer in animals?

Spears-cross

A There was a series of experiments, correct.

Q And Dr. Homburger was able to produce cancer in animals with the fractionate DDD that you sent?

A He was able to produce tumors with very large quantities of DDD.

Dr. Homburger was also able to illustrate that the [p. 10186] fractions that contained DDD were active but they also contained many other compounds.

Dr. Homburger also got an indication that when DDD was added to tobacco smoke condensate that there was an increase in the number of tumors. As I recall those were the results.

Q That is that DDD, had an additive affect to the carcinogenic properties of tobacco smoke?

A When DDD was added to tobacco smoke condensate there was an increase in -

Q DDD was used on tobacco used in cigarettes by Lorillard consumers, correct?

A The farmers used DDD and DDT to - at the times leading up to that discovery, yes.

Q Tell us what journal the results of that study were published in?

A That was not published.

The reason I think should be clear that DDD and DDT were no longer used in tobacco shortly thereafter and we were aware of the fact that they were coming out.

Spears-cross

It was also true that DDT was a known component of tobacco smoke and also known to be an animal carcinogen -

Q Did Lorillard tell the consumers?

A No. Lorillard didn't tell the consumers.

* * *

Spears-redirect

[p. 10279] Q Dr. Spears, you have been shown a document from Dr. Seligman at Philip Morris, Plaintiff's Exhibit 6800A?

A Yes, I have.

[p. 10280] Q Do you have it in front of you?

A Yes, I do.

Q And that - does that document contain recommendations for industry research, as well as the subject that Mr. Edell referred to as subjects to be avoided?

A Yes. There is a separate page entitled "Potential Long-Term Scientific Studies."

Q Would you review some of those studies that Dr. Seligman was recommending the industry should do?

A You want me to read them?

Q Yes.

And tell us if those are relevant to smoking and health, please.

A Number one is Validation of new short-term bioassays versus long-term skin painting and inhalation.

That would be relevant and if one could achieve it, it would be important because long-term skin painting takes two years and inhalation experiments usually take two years or more, so it would shorten the time to get valid results.

Correlation between skin painting and inhalation, is another suggested topic.

I think again the relevance is self-apparent.

The effect of environmental and other factors in skin painting and/or inhalation, and there are a number of subjects under that; "Skin painting in germ free animals, [p. 10281] Effect of diet on tests, Effects of inducers in diet on test, Viral environment/immunological" - these all relate to other factors or factors other than the treatment, which might be affecting the result in either skin painting and inhalation experiments. Some are known to affect it, such as the viral environment.

Inducers in the diet relate to enzyme inducers, and it is thought generally that enzymes play a role in activating carcinogens, become the compounds that actually react with the genetic material.

The next one is "Effect of strain variation in skin painting." I have already indicated this is very important, that what you get depends upon the genetic strain of animals that you select.

"Different species response to smoke and/or condensate." Again, not only strain variation but the actual species of the animal.

And other subjects they were recommending are quite relevant. "Relevance of long-term tests to man in

biochemical terms only," and that relates to determining what the biochemical aspects of the animal relates to biochemical aspects of man, which would aid in the interpretation of any animal result.

"Investigate threshold of carcinogens in various species with specific chemicals." In other words, what is a [p. 10282] no dose effect, if there is one.

"Investigate end points of bioassays, especially in inhalation," and this appears to relates [sic] to other end points other than cancer in that the bioassays do not give rise to lung cancer.

Smoke-related effects in respiratory system using single or multiple smoke component. I guess that deals with singling out components with tobacco smoke and carrying out inhalation studies on that alone would be quite relevant.

Metabolic fate of nicotine using labeled nicotine in animals, that is simply what happened to nicotine after an exposure or dose.

How it is eliminated from the body and how long does it take. Again, quite relevant to smoking.

Interaction of nicotine with drugs. This has to do with the possibility that nicotine induces enzymes which metabolize, facilitate the metabolism of other drugs.

Positive effects of smoking, and talking about - not sure what this is - something frustration. Something frustration by smoking.

Q Maybe "easing"?

Spears-redirect

A Easing frustration by smoking.

Address the question whether or not any nitrosamines are relevant to inhalation toxicology.

Quiet [sic] appropriate and I assume it means, the [p. 10283] suggestion is one should be doing inhalation with any nitrosamines themselves.

The nitrate dilemma, skin painting versus inhalation. How does one manage the trade off and this relates directly to the observation that it had been known for many years back into the 50's, that nitrates we added to tobacco reduce the activity on mouse skin.

However, at the same time, other classic compounds were being formed, nitrosamines and discussing is there a way to assert the toxicology of the nitrosamines versus reduction on animal skin.

And the next one is ambient smoke, any danger to the nonsmoker. This relates to environmental tobacco smoke.

Effect of smoke and/or nicotine on animals versus acclimatized animals.

This relates to the idea that something - animals adapt, most animals adapt after some exposure and the question being posed here as to whether or not the effects of tobacco smoke are different on animals that have been preconditioned, if you will, with the tobacco smoke.

And the last one is adaptation to environmental insults.

I guess it relates to how the organism relates to any insult, not just tobacco smoking.

Spears-redirect

Q Dr. Spears, were all these proposed scientific studies [p. 10284] relevant to smoking and health, in your opinion?

A Yes.

Q In regard to the subjects that be avoided, do you agree that [sic] those subjects should be avoided?

A I don't know that I agree with it.

For example, "developing new tests for carcinogenicity," the Government and others have been working in this field for years and years, it is a long-term proposition. It is doubtful that CTR could make much progress in that area relevant to what already has been going on in the scientific community. I would agree with that as not being a very promising area for the Council for Tobacco Research.

"Attempt to relate human disease to smoking." I am not really sure I understand what that means.

But if it means epidemiological studies, they have already been conducted and I would again not see much expectation for differing results in epidemiological studies by simply repeating them, so I agree that it would not be an area that I think would be very productive scientifically.

And the last, "Conduct experiments which require large doses of carcinogen to show additive effect of smoking."

That seems to be rather relevant if you really mean large doses. It has some relevance if you are talking about [p. 10285] small doses because there are other - there are

Spears-redirect

carcinogens in our environment in our air here in the courtroom, food we eat and so forth. Maybe small doses might be relevant but not large doses, in my judgment.

Q Do you know if any action was taken in regards to the letter and the subjects to be avoided?

A As I stated earlier, I am unaware of any communication of this to the Council for Tobacco Research. This was a kind of a planning function.

* * *

Deposition of Rose Cipollone

[p. 11152] Q Mrs. Cipollone, You've testified at length about what your husband told you about smoking and the fact that he didn't like smoking and wanted you to quit and the fact he showed you various articles. Is that correct?

A Yes.

Q And he showed you articles that said if you had stopped smoking, you would have a lesser chance of getting these diseases that were related to smoking according to these articles. Is that correct?

A I don't understand that question.

Q My question is did he show you articles that said if you stopped smoking, you would have a lesser chance of getting lung cancer, heart disease, or emphysema?

A I think the articles that you are referring to, they [p. 11153] would be news articles like T.V. or in the newspaper. He would draw my attention to articles that stated cigarette smoking was dangerous and caused heart disease, lung cancer and various other diseases. That is what drew my attention to those.

Deposition of Rose Cipollone

Q He drew your attention to those because he wanted you to quit. Isn't that correct?

A Yes.

Q My question is did he also direct your attention to articles that said if you stopped smoking you would have a lesser chance of getting some of those diseases?

A That was the same type of article.

Q Do you recall seeing those articles?

A Yes, I do.

* * *

Harris-cross

[p. 11429] Q Is it your testimony that the funding of basic research by the Council for Tobacco Research is somehow wrong?

A Not wrong, but it is not enough.

Q But if you are doing basic research along with other research, it is perfectly appropriate, isn't it?

A This is very abstract.

The answer would be that it is fine to fund basic research. In fact, much of the research that the Scientific [p. 11430] Advisory Board funded, that is not the lawyers, but the scientists, was basic research on different aspects of the body's defenses on cancer, viruses and cancer.

On the other hand, in fact, Dr. Wakeham and many other scientists commented most of CTR's research is directed not towards tobacco and cancer but cancer in general, but it could be scientifically meritorious research.

Harris-cross

Q And the Scientific Advisory Board funded a good bit of research?

A In cancer, in general.

Q It was research done by reputable investigators?

A Sometimes.

Q You will give me that?

A I am going to have to say sometimes.

Q We will take it. At least some of the research that was conducted by investigators, funded by the Council for Tobacco Research, was done by reputable investigators?

A True.

Q A lot was, wasn't it?

A I -

Q The research was quality research, wasn't it?

A Some of the research was, especially the research on basic aspects of cancer, some of it was quality research. I think that is correct.

* * *

[p. 11650] Q Dr. Harris, do you remember yesterday when I asked you whether it was not a fact that 37 studies that had been funded by the Council for Tobacco Research between 1954 and 1964 were cited in the 1964 Surgeon General's Report? Remember when I asked you that?

[p. 11651] A I certainly do.

Harris-cross

Q Your answer was you didn't know?

A No, I didn't know. I had never made that count.

Q You never made any effort to determine before you read your opinions in this case, whether any of the research that had been done by the Council for Tobacco Research was used and relied upon by the Surgeon General in 1964?

A I knew that. But I didn't know how many and I hadn't taken a look and accept [sic] what they were cited for, in what chapter and what purpose -

Q Did you identify one before I gave them to you yesterday?

A Yes.

Q Which one?

A Studies by Deyman, on congress and smoking were cited in the study by Carl Seltzer on morphological - different work on smokers, between smokers and non-smokers I knew was funded by CTR, and I knew was certainly relied upon and mentioned in the Surgeon General's Report.

Q Now, yesterday after the close of court, I gave Mr. Edell and he gave to you each of the 37 articles that I referred to, did he not?

A Yes. I read them.

Q Did you read all 37 yesterday?

A I had a long night, but I did.

[p. 11652] Q So you are now able to confirm that 37 studies funded by the Council for Tobacco Research

between 1954 and '64 were cited by the Surgeon General in his 1964 report?

A Well, I am not here to play a numbers game.

Q Say yes or no.

A If you just want yes or no, the answer is no.

Q How much did you find that were cited in the Surgeon General's reported?

A I found 38 citations. I found that they were duplicative and reflected 29 papers. But I must say if we understand what the 29 means -

Q I am not asking you for that. I am asking you whether or not you confirmed what I said.

You are telling me my numbers were wrong, it wasn't 37 it was 29, because some of them were duplicative?

A It is true they were duplicates but we have to look at the 29, what they mean.

Q Answer my question.

When Mr. Edell gets up he can ask you about the import of these to science and medical health and smoking, okay?

A I understand.

Q For the moment you answer what I ask.

A The answer, direct answer is that there are 29 different papers cited for one reason or another in the Surgeon [p. 11653] General's Report, that if we go back to the paper, are listed in two places. First, in the footnote to

the paper it will say we knowledge [sic] support of either TIRC or the Council of Tobacco Research and, second, if you look at the directors' report of the Council of Tobacco Research, which you also gave me, I think it was appropriate, you will see mention of an abstract of that article.

So that as a double check, it is correct. I could find a citation in the Surgeon General's report, go back to the paper and it says we acknowledge the support of CTR or its predecessor, and then also go to the report of the director, Dr. Little, for this period, under - and in that report, the director abstracts - writes an abstract that they create of the article, and you can cross check that the CTR acknowledges that at least implicitly by saying here is an abstract of the paper we have funded and it comes to 29.

Q And the 38?

A Thirty-eight citations. But I think that is - the answer is 29 different articles, which were cited sometimes more than once for a total of 38 times.

Q And each of those articles was published in the scientific literature at the time?

A Most of them.

Q And were available to anyone interested in that subject matter at the time?

[p. 11654] A Correct.

Q They were part of the state-of-the-art at the time?

A Correct.

Harris-cross

Q They were published in abstract form in the annual reports of the scientific director of the Council for Tobacco Research?

A In abstracts written by the director.

Q But the entire articles were also published and in the scientific literature, correct?

A Correct.

Q So anything that was said in the articles was available to any scientist interested in the subject matter?

A A scientist could, in fact, compare the article with the director's report, and later on in fact look and see what the Surgeon General said about the article.

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